United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7067

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES FIDELITY & GUARANTY COMPANY,

Plaintiff-Appellant,

vs.

ROYAL NATIONAL BANK OF NEW YORK and MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,

Defendants-Appellees.

B
P/C

JOINT APPENDIX

Volume II, JA 301 - JA 600

JULIEN & SCHLESINGER, P.C.
Attorneys for Plaintiff-Appellant
2 Lafayette Street
New York, New York 10007
(212) 962-8020

HART & HUME
Attorneys for Defendant-Appellee
Royal National Bank
10 East 40th Street
New York, New York 10007
(212) 686-0920

KONHEIM, HALPERN & BLEIWAS
Attorneys for Defendant-Appellee
Merrill Lynch
11 Park Place
New York, New York 10007
(212) 267-5633

UNITED STATES COURT OF APPEALS
FILED
MAY 27 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

(9568)

LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing

South River, N.J. (201) 257-6850 | New York, N.Y. (212) 563-2121 | Philadelphia, Pa. (215) 563-5587 | Washington, D.C. (202) 783-7288

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Docket Entries	JA1
Opinion of District Court Dated January 12, 1976 (Filed January 15, 1976) . . .	JA7
Complaint (Filed May 20, 1968)	JA19
Answer of Defendant Royal National Bank (Filed December 23, 1968)	JA26
Amended Answer of Defendant Royal National Bank (Filed December 30, 1968)	JA29
Answer and Cross-Complaint of Defendant Merrill Lynch (Filed June 24, 1968) .	JA34
Answer of Defendant Royal National Bank to Cross-Claim of Merrill Lynch (Filed December 30, 1968)	JA38
Plaintiff's Answers to Interrogatories of Defendant Merrill Lynch, Numbers 16, 20 & 21 (Filed June 1, 1970)	JA40
Pretrial Order Dated May 10, 1974 . .	JA43
Transcript of Trial Held on August 6, 7 8 & 11, 1975 Before the Honorable Henry F. Werker (Filed September 16, 1975)	JA60

Contents

Page

Exhibits Introduced During Trial:

1 — Letter of Thomas C. Rockafeller to W.E. Hutton & Co. With Enclosure . . JA635

2 — Security Payment From W.E. Hutton & Co. JA637

8 — Dates & Delivery Notices From Royal National Bank to Merrill Lynch Pierce Fenner & Smith JA638

10 — Credit Advice Forms to Frank Mazzochi, Jr. JA642

14 — Letter of September 21, 1966 From C.M. Hoffmann JA647

16 — Enclosures Attached to Foregoing Letter JA648

36 — Bank Account Agreement & Authorized Signatures JA652

42 — Front & Back of Check Signed by Frank Mazzochi, Jr. JA654

46 — Statement of Qualifications and Opinion of Thomas O. Rockafeller JA655

48 — Memorandum Stating Receipt of $5,000. by the Federal Reserve Bank . JA660

Contents

	Page
50 — Statement of Qualifications and Opinion of Frank Sixt	JA661
A — Bank Signature Card on Mutual Credit Union & Corporate Banking Resolutions .	JA666
B — Authorized Letters Signed by Frank Mazzochi, Jr.	JA676
C — Confirmation Orders From Merrill Lynch Pierce Fenner & Smith	JA680
D — Bank Statement on Account of F. Mazzochi, Jr.	JA684
F — Receipt Dated August 4, 1966 From Frank Mazzochi, Jr.	JA687
J — Letter Dated August 10, 1967 to F.B.I.	JA688
S — Letter to Mr. Stolz From Mr. McGraw With Enclosure	JA690
T — Memorandum From Mr. McGraw to Peter Walter With Notes	JA693
CC — Statement of Qualifications and Opinion of Vincent P. Fay	JA696

Contents

Page

18 — Deposition Testimony of Wallace Nathan Pages 3 to 22 . . . . . JA701

13 — Criminal Trial Testimony of Robert I. Kayner Pages 68 to 129 . . . . . JA715

44 -- Deposition Testimony of Anna Mazzochi Pages 7-26 . . . . . JA731

44A — Deposition Testimony of Frank Mazzochi, Sr. Pages 7-28 . . . . . JA749

49 — Deposition Testimony of Conrad Hoffman Pages 3-40 . . . . . JA771

R — Deposition Testimony of Irving H. Stolz Pages 3-48 . . . . . JA790

Z — Deposition Testimony of Robert I. Kayner Pages 4-104 . . . . . JA821

Deposition of Rudolph J. Santoro Pages 4-115 . . . . . JA888

AA — Deposition Testimony of Edward I. McGraw Pages 3-199 . . . . . JA939

Y — Deposition Testimony of R.G. Hawthorne Pages 3-50 . . . . . JA1050

Contents

Page

51 — Deposition Testimony of Arnold Dutcher Pages 3-32 . . . . . JA1079

Q — Deposition Testimony of Peter Walter Pages 3-58 . . . . . JA1101

X — Deposition Testimony of Angelo D. Dellatte Pages 4-183 . . . . . JA1131

WITNESSES

Rudolph Santoro:
Direct JA69
Cross JA170
Redirect JA192
Recross JA202

William Carter:
Direct JA209

Robert I. Kayner:
Direct JA216
Cross JA305
Redirect JA338

Stephen Weis:
Direct JA292
Cross JA295

Thomas O. Rockafeller:
Direct JA362

Contents

Cross JA385
Redirect JA463

Frank W. Sixt:
Direct JA485
Cross JA488, JA528

Voir Dire JA460

chief of the government bond division and is giving his testimony apparently based upon knowledge he gained in that capacity. Since the time in question he was not even in the government bond division but rather was in personnel.

THE COURT: That's right. And I'm wondering what he is doing here, basically.

THE WITNESS: The chief of the government bond division prior to me was deceased in the job and was not available.

THE COURT: I understand that, but from the court's standpoint I wonder just what you have been able to contribute to this particular case, the issues that are here involved.

Q Directives issued by the Bureau of the Public Debt would not necessarily relate to the functions of the Federal Reserve Bank in its relationship with other banks in the City of New York, is that correct?

MR. JULIEN: I object to it.

THE COURT: I will sustain it. There's no relevance to it. It has no relevancy.

MR. HART: It does, your Honor, I respectfully submit. May I state why.

THE COURT: State what it is.

MR. HART: The directive issued by the Bureau of Public Debt, as I understand it, would relate to the function of the Federal Reserve Bank in so far as it was acting either in connection with the denominational exchanges or redemptions of securities. But it wouldn't necessarily bear on what the Federal Reserve Bank does in its relationships with other banks within the City of New York, and if the banks within the city use the Federal Reserve Bank as a vehicle for reporting and inquiring about stolen securities, that would not have anything to do with the Bureau of the Public Debt and its fiscal agent, the Federal Reserve Bank. That would be the Federal Reserve Bank in a different capacity.

MR. JULIEN: This witness' testimony relates to a very narrow issue, a matter of credibility with respect to the previous witness who was before you.

THE COURT: I agree with that. But, on the other hand, this question which is being asked, in view of his already-given testimony, has no relevancy whatsoever.

MR. HART: I have no further questions.

THE COURT: All right.

MR. HALPERN: I have no cross, except that

I move to strike his testimony as being irrelevant and immaterial.

MR. HART: I will join in that motion.

THE COURT: I will deny that, both motions.

Mr. Weis, you are excused.

MR. JULIEN: I have another question.

THE COURT: Let go of it, please.

MR. JULIEN: If you wish.

THE COURT: You are excused, Mr. Weis. Thank you.

(Witness excused.)

MR. JULIEN: Now we can have the last gentleman back, your Honor.

THE COURT: All right, let's get Mr. Kayner back.

MR. JULIEN: While we are waiting for Mr. Kayner, I am going to offer the examination or the deposition of the Federal Reserve Bank of New York, by Stephen Weis, taken on March 23, 1971, under the same arrangements that we had before with respect to the other witness.

MR. HART: I have no objection except to the extent I understood we didn't have to offer any

depositions, they were all deemed to be part of the record.

MR. HALPERN: The man has taken the stand, he has testified live. I don't understand why he is offering that. There's nothing to refute.

THE COURT: Can you tell me what there is in that record that you wish to draw my attention to right now?

MR. JULIEN: It will be a little difficult to do at this moment.

THE COURT: Why would it be difficult?

MR. JULIEN: It's somewhat lengthy. There is a little statement --

THE COURT: Why didn't you ask him while he was here? You had a direct examination.

MR. JULIEN: Your Honor will recall I wanted to offer this deposition before we even called him. I thought it was their insistence we have a live witness. Now they have a live witness from whom they elicited nothing.

MR. HALPERN: I object to "their insistence." You never spoke to me. I never said no. I just want the record to show that.

MR. JULIEN: Somebody said you have got

to do that.

THE COURT: I think we elicited on the very narrow issue all we can elicit. I will not take that deposition in evidence. You have made your point, in other words, right? There were no lists according to our witness. That's the point.

MR. JULIEN: Okay, that's right. All right.

MR. HART: I'm simply confused on the question of these depositions.

THE COURT: Don't be confused. Question the witness.

MR. HART: Good.

R O B E R T I. K A Y N E R resumed.

CROSS EXAMINATION

BY MR. HART:

Q Mr. Kayner, would you begin, please, by giving us your academic and professional background prior to your joining the Royal National Bank?

A All right. I attended the University of Buffalo as an undergraduate, and after service in the U. S. Army I graduated from the Baruch School with a major in finance.

I then was employed with the Trade Bank &

Trust Company until -- from 1958 until 1962 in various capacities.

I joined Royal Bank in 1962 as the manager of the credit department and I subsequently became an officer of the bank and was transferred, I think, oh, in 1964, something like that, up to 149th Street. I had been at the main office prior to that.

Q I'm sorry?

A I had been at the main office prior to my working at 149th Street.

I also attended graduate school at NYU, but I didn't get a master's.

Q Just on the question of dates, you testified at your deposition on October 14, 1969, that, at page 4, you were with Royal National Bank from May of 1962; does that refresh your recollection?

A That's correct.

Q When did you go to the 149th Street branch, do you remember?

A Well, I think it was some time in 1964. I would have to think a lot about it to come up with an exact date.

Q If at the criminal trial you testified it was 1963, would you accept that as being correct?

A I would accept that, yes.

Q During the time that you were at the 149th Street branch of Royal National Bank with what degree of frequency did that branch have occasion to sell securities to customers of the bank?

A I really couldn't give you a specific or a definite answer on that. I know that a certain amount of securities were handled for customers, both as collateral for loans and then subsequently sold for the customers, and I'm sure that a certain amount of securitie were sold just for customers, but how much I really don't know.

Q Did the bank charge commissions when it rendered the service?

A Well, I think that there was a small service charge that the bank would have charged. I think the commissions that the brokerage firm would charge they would pass along. I don't think the bank made a lot of money on that. It's strictly a service for the customer.

Q And the transactions in question, there was neither a service charge nor a commission charged to Mr. Mazzochi. Do you recall if that was the normal practice?

A I really don't recall if that was the normal practice. I would be surprised. I would think that there had to be some sort of a pass-through of charges that the brokerage company made.

Q Oh, they did charge to Mr. Mazzochi the brokerage commission.

MR. JULIEN: This is absolutely irrelevant.

MR. HALPERN: I object to the form of the question.

MR. HART: It's in evidence.

THE COURT: Yes.

MR. HART: I thought we could save some time because I didn't realize there was any question about it, your Honor.

THE COURT: I don't really think that it has much significe. Supposing the bank had charged them a commission? What difference would it have made?

MR. HART: I believe it does.

THE COURT: Supposing the brokerage house has charged a commission?

MR. HART: I simply want to talk about a commission charged by the bank, not by a brokerage

house.

MR. HALPERN: I have no objection to the bank, but the import of the question was that the brokerage house charged Mazzochi. That's why I object to it.

THE COURT: I understand that.

MR. HART: I didn't mean to say that.

MR. JULIEN: My objection is that he's telling him, that's what he's doing. If he's got something in the record, then it's already there, and he doesn't have to tell it to this witness because what this witness knows or pretends to know is going to be a matter of some importance now, in view of his professions of remembering nothing at all.

MR. HART: I object to the "pretends to know" portion of the statement. I ask it be stricken.

THE COURT: The objection is in the record.

BY MR. HART:

Q Mr. Kayner, would you please look at Exhibit 10 and tell the court whether that reflects whether or not the Royal National Bank charged a commission to Mr. Mazzochi for the sale of the Treasury notes in question.

MR. JULIEN: Objection. They speak for themselves, your Honor.

THE COURT: I will let him answer.

While we are having a pause here, Mr. Schlesinger, I'm going to ask you to be seated and stay seated until I get up.

MR. SCHLESINGER: I'm sorry.

THE COURT: Believe me, there's a lot of conversation and scurrying going on here.

MR. JULIEN: There must be a message of some importance. Could you give me a moment?

MR. SCHLESINGER: All right.

A It does not appear that a commission was charged.

Q At the time these transactions took place, did you know Mr. Mazzochi to be a customer of Royal National Bank?

A To the best of my recollection, he was a customer of the bank, yes.

Q Do you recall --

MR. JULIEN: I object to that. That isn't the fact in this case, either, that he was a customer. Nobody contends he was.

MR. HART: I don't believe counsel can

object to the answer.

THE COURT: You can't object to the answer. It's in the record.

MR. JULIEN: I'll come back to it.

Q Do you recall how long prior to August, 1966 you knew him to be a customer or Royal National Bank?

MR. JULIEN: Now I'm going to object.

THE COURT: I will now sustain an objection.

MR. HART: May I ask on what ground, your Honor?

THE COURT: Yes. You are stating something that is contrary to the record. The customer of the bank was the credit union.

MR. HART: May I inquire into that, your Honor?

Q Mr. Kayner, in banking circles --

THE COURT: Don't ask a general question like that because I'm going to sustain an objection to that too.

Q In order to be a customer of a bank, does a man have to be a depositor in a personal account?

MR. JULIEN: I object to it, your Honor.

THE COURT: Sustained.

Mr. Kayner, help out counsel. Did you know him to be an officer of the credit union which was the customer of the bank?

THE WITNESS: Yes, I believe he was. I also -- well, I also believe -- now, I'm sure that was in my testimony earlier, that he was an officer or a principal of a few other business accounts, not personal accounts, but business accounts. This is where we knew him from.

THE COURT: All right.

Q Did he have business dealings with the bank prior to August of 1966?

A Yes. I am sure he was a customer of the bank as just stated in connection with business accounts. I don't know how many.

Q Do you recall how long before August, 1966. You knew him in this capacity?

A No, I don't recollect.

Q Are you familiar with the Mutual Credit Union account?

A Well, until today I didn't remember the name of the credit union. I knew he was involved with a credit union.

MR. JULIEN: Please speak up.

A I say I knew he was involved with the credit union that was a customer of the bank. Until today I didn't remember what the name of the credit union was. There were several in that branch.

Q Would you look at Exhibit A and tell us whether that refreshes your recollection as to how long before August, 1966 you knew Mr. Mazzochi in the capacity you have described?

MR. JULIEN: Excuse me. By showing him the documents of the account, how is that calculated to refresh his recollection as to how long he knew it? How long the bank had them is one thing, but how long he knew --

THE COURT: Almost anything might refresh his recollection.

MR. JULIEN: Oh, that is true. We have to come back to that too.

THE COURT: He ight have consulted the signature card at some time or other, you never know.

MR. JULIEN: We'll see.

THE WITNESS: The signature cards --

MR. JULIEN: Please. I'm having a little difficulty.

THE WITNESS: The signature cards and the

resolutions indicate that --

MR. JULIEN: Objection.

THE COURT: Don't tell us that.

THE WITNESS: Oh.

THE COURT: He asked you whether looking at those in any way refreshed your recollection as to how long you knew it.

A No, it does not.

THE COURT: All right.

Q At your examination before trial on October 14, 1969, at page 8 you were asked the following question and gave the following answer:

"Q How much" --

MR. JULIEN: What line are you on?

MR. HART: Line 6, 7.

MR. JULIEN: Thank you.

Q "Q How much prior to August, 1966 in time did you meet Frank Mazzochi, Jr.?

"A I can't remember. I know he" --

MR. JULIEN: I object to anything else following that. The rest is all speculation and not responsive. "I can't remember" is the answer.

MR. HART: Your Honor has a copy of the

transcript. May I finish the answer?

THE COURT: You may complete the rest of the answer. The objection is overruled.

Q "I know he was known to the bank before that. I knew him before that. I don't know if it was a year, six months or something like that.

"Q You don't think it was more than a year though?

"A No."

Do you accept that as being accurate?

A Yes.

Q Do you remember whether Mr. Mazzochi came into the bank prior to August 1968, physically walked onto the premises?

A Oh, I am sure that he had been in the bank prior to August 1966.

MR. JULIEN: It is not responsive, your Honor. I think the question calls for whether he knew, whether he saw.

THE COURT: That's right.

A Okay, yes, I will change it. The answer would be yes.

Q Do you recall how often he came into the bank, how often you saw him in the bank?

A No.

Q On the occasion that Mr. Mazzochi asked you to sell the security which he said belonged to his family, would you have sold that security for him if he had said it belonged to him?

A Certainly.

Q Certainly is your answer? I just didn't hear.

A Yes.

Q Is that right?

A Yes.

Q By telling you that it belonged to his family, did he gain any advantage in dealing with the bank such as a better price or a better service?

MR. JULIEN: I object.

THE COURT: I will sustain the objection.

Q When he told you they belonged to his family and he was selling them on his family's behalf, did you have any reason to believe that he was lying?

A No.

Q And he volunteered this information to you, is that correct?

A Well, that I don't remember. I may have asked him who owned it, who owned the notes.

Q But he freely gave you the answer that he gave?

A I don't really recall.

Q You don't remember.

At the time you approved the sales that you approved, were you satisfied that Mr. Mazzochi had the right to sell them?

MR. JULIEN: I object to this, if your Honor please. This is all conclusory stuff. Conclusions of the witness.

THE COURT: I am assuming that this witness has a right to state his conclusions because he exercised

judgment and authorized and approved the sale. So he may answer the question.

MR. JULIEN: Might I hear that again, sir, please? The question.

THE COURT: Yes.

(Question read.)

A Yes, obviously.

Q Would the Royal Bank at 149th Street in 1966 have sold securities for a stranger walking off the street and asked the bank to sell securities for him?

A I am sure I wouldn't have. I doubt if any other officer of the bank would have.

Q Was this then a service that was restricted only to people known to the officers in the bank?

MR. JULIEN: This is terribly leading and suggestive, your Honor. He might just as well --

THE COURT: I will let him answer this.

A Well, I would say that it was something tnat was done for customers of the bank.

THE COURT: Are you telling this Court that if I walked in off the street with treasury bills and identified myself, license, Social Security card and so forth, and so on, that you wouldn't sell?

THE WITNESS: Well, with all of the credentials

that you would have, it would certainly --

THE COURT: I don't mean as a Judge. I mean --

THE WITNESS: As an ordinary citizen?

THE COURT: -- a respectable-looking citizen walks in off the street with these documents and the treasury bill.

THE WITNESS: Probably not.

THE COURT: You wouldn't sell?

THE WITNESS: Probably not. In other words, you would probably -- well, you would certainly go into why he is not doing it through his own bank or through his own broker and so on.

THE COURT: Very simple. I just moved into the neighborhood. I don't have a bank.

THE WITNESS: Well, then you might get into the area, could I have a prior bank reference and so on. Just to establish who the person is other than just identification. You would want some background as to the person's reliability, something like that. That would be the normal procedure.

Now, if you were a friend, say, of a customer --

THE COURT: That is restricted to that. That, after all, is more or less what your normal procedure would be with respect to that, right?

THE WITNESS: Yes.

THE COURT: And one of the issues that we have here pending is what is your normal procedure and how does that conform to common usage and custom in the trade.

All right, go ahead.

MR. HART: Your Honor, I respectfully believe you interrupted the witness in the middle of something he was beginning to say. I believe that his answer was in response to your question, if you walked in off the street and he didn't know who you were, what would his practice be, and I believe he then went on to expand what his practice would be if you were introduced by someone, for example, and I believe --

THE COURT: I interrupted him because that was not responsive to my question. If you want to ask it, you can ask it, but I think then we are getting down to the nitty-gritty instead of floating around the periphery as we have been doing all along.

Q What would your practice be with respect to someone who was introduced to the bank by someone well known to the bank and who the bank had known for a considerable period of time?

A Well, I would say that probably each case would have to stand on its own, but the likelihood is that you would accommodate your customer's request.

MR. JULIEN: If there is no practice, then likelihoods, I think, doesn't reach the level of probative evidence, your Honor.

THE COURT: Likelihood gets pretty close to practice.

MR. JULIEN: There is no practice when he says each case is individual. That is what he said.

THE COURT: I will accept the answer.

Q In considering whether or not you would engage in a transaciton of this sort, what would be the criteria you would apply to the person who was asking you to make that transaction?

A Are you referring to if somebody brought in a friend? What would I apply to those criteria?

Q Well, let's take that example, if someone brought in a friend.

A All right, for example if the local housewife, who had an account for ten years in the bank and it was a savings account or a special checking account,brought in a friend, you might be reluctant to do it. She might not have really -- other than a friend she might not know who the person was in business and so on, what kind of business dealings the person had.

On the other hand, if it was a businessman in the

neighborhood that you knew, that was bringing in a potential new customer, and he asked you to do a favor for him for his friend, you would be certainly more inclined to do it.

Now, there would always be grays rather than blacks and whites whether you would do it in all instances or some instances, but I think it gives you a fairly complete picture.

Q Do you know whether Mr. Mazzochi had been introduced to Royal National Bank, whether Mr. Mazzochi had been introduced?

A I am sure that he had to have been introduced when the account came into the bank.

MR.JULIEN: Judge, would you please instruct this witness that when he is asked for an answer, it calls for his knowledge, not for a conclusion.

MR. HART: That is not completely true, if I may suggest, your Honor, because at the time he made this transaction what was important was not only what he actually knew of his own knowledge, but also what he believed to be the case. Because we are dealing with his judgment.

THE COURT: Okay. We are dealing with his judgment, but you are asking him questions and he says well, I assumed, but he doesn't know. His answer has to be of his own knowledge. What did he know about it, this person

who brought in the bills.

Q In August 1966, did you believe that Mr. Mazzochi had been introduced to the bank by people in the mutual credit union when they made him first an officer and then president of the credit union?

MR. JULIEN: I think that question is bad in form, leading and suggestive.

THE COURT: I think it is, too, but I am going to let him answer.

A I don't know in August of 1966 if I believed that he was introduced by those people. I believe that I knew that he was an officer in that credit union at that time; who introduced him to the bank, I don't know if I knew at that time. I certainly don't remember now.

Q Did you know other people in that credit union?

A Well, I did then. My memory was refreshed by looking at this.

Q By looking at the signature cards, is that what you mean?

A Yes.

Q Who, not necessarily --

MR. JULIEN: That is Exhibit what?

THE COURT: Exhibit A.

MR. JULIEN: Thank you, sir.

Q Not necessarily by name, but if you can do it by name, that would be fine, but who were the people in the credit union? What were their professions, what were their relations to Royal NationalBank, if any?

A Well, may I look at this?

THE COURT: If you have no independent recollection.

THE WITNESS: I have no independent recollection of that at this time. I am sure I had in '66.

THE COURT: If you were to look at the names only - let me see that.

All right. So you looked at the front page, right? The names. I am not interested in the back.

THE WITNESS: The back, the resolution.

THE COURT: Look at the back of the resolution, look at those names and see if they refresh your recollection as to what their professions or business may have been.

THE WITNESS: I only see one name other than Mazzochi's name that I know right offhand here, and I would be --

MR. JULIEN: A little louder.

THE WITNESS: Only one name is familiar to me at this moment on the resolution, other than Mazzochi, and that would be -- do you want me to give the name?

THE COURT: Yes.

A Arnold Dutchen.

I would be guessing as to what business he is in.

MR. JULIEN: I object to any guessing.

THE COURT: He is not going to guess. I won't let him, Mr. Julien.

Q In August 1966, were you familiar with the people in the mutual credit union and more or less what they did for a living?

A Pardon me?

Q In August 1966, were you familiar with the people who were in themutual credit union and what they did for a living?

MR. JULIEN: Could we have that question separated, your Honor? There are two elements. I think we ought to have them separated.

Did you know them was the first question, I would think.

A I knew some of them.

Q Did you know what they did?

A At that time, certainly.

Q At that time?

A Yes.

Q In your experience as a banker, are documents of title normally required in questions with bearer securities?

MR. JULIEN: I object to it.

THE COURT: I will permit him to answer.

A I really don't know.

Q Sorry?

A I really don't know. I --

MR. HALPERN: That has been answered.

THE COURT: Yes, it is answered.

Q In 1966, was there anything that you recall which would have required Mr. Mazzochi to inform Royal National Bank of assets which he owned outside of what he had on deposit with the bank?

A No, there would have been no reason to have done that.

Q Was he required in connection with his dealings with the bank to furnish a financial statement or a statement of net worth, as far as you know?

A Required? He would only have been required to if he had applied for credit, for a loan.

Q Had he?

A I don't recall.

Q In dealing with securities, do you know what the

term "deliver against payment" means?

A I wouldn't -- no, I wouldn't want to guess at the term. I mean, it seems obvious but I wouldn't want to guess at it.

Q You don't know. Can you identify the document which has been marked Exhibit G for identification?

A Yes. It is a credit memo prepared by the loan department of the bank for credit to the account of Frank Mazzochi.

Q How much does it credit to the account of Frank Mazzochi?

MR. JULIEN: Is this in evidence?

MR. HART: I offer it in evidence.

MR. JULIEN: No objection.

MR. HALPERN: No objection.

THE COURT: Received.

(Defendants' Exhibit G was received in evidence.)

Q How much does Exhibit G show was credited to the account of Mr. Mazzochi, Mr. Kayner?

A $70,108.42.

Q What date was that credit issued?

A August 8th.

Q That was the same day that you approved the

$25,000 check, is that correct?

A That's correct.

THE COURT: August 8, 1966.

THE WITNESS: '66, yes.

Q That is the same date as the settlementdate of the first two sales to Merrill Lynch, is that correct?

A That's correct.

MR. JULIEN: What is it you are showing him?

MR. HART: Exhibit C in evidence.

Q As an officer of the bank, was it any part of your function to call up telephone numbers given to you by a customer in connection with the opening of an acoount to verify anything at all?

A No.

MR. HART: I have no further questions.

THE COURT: Mr. Halpern.

CROSS-EXAMINATION

BY MR. HALPERN:

Q Mr. Kayner, do you remember testifying in the criminal action in this case?

A Vaguely.

Q Do you remember being asked "What was the bank's procedure -- this is page 71.

"Q What was the bank's procedure with regard to

a sale of bonds? Does the bank actually sell the bonds?

"A The bank sells it through a broker."

Is that correct, sir?

A I will accept it.

Q Do you accept it?

A Yes.

Q Let me ask you this, Mr. Kayner --

MR. JULIEN: I have the answer as "The bank sells it through."

MR. HALPERN: That is what I said, "sells it through a broker." That is exactly what I said. And he accepted that.

Q Do you accept this statement, "And when they are sold by the bank" --

MR. JULIEN: Same page?

MR. HALPERN: Page 109, sir.

Q "-- do they go to a broker that the bank selects?"

"A Yes, that is correct."

A That is correct.

Q Do I understand that Royal Bank had an account with Merrill Lynch at that time?

A I would have to assume that.

MR. JULIEN: I object to it and ask it be

stricken.

THE COURT: It may be stricken.

Q Well, let me ask you this, Mr. Kayner, did you call up any broker to find out what the quote was for the bond?

A I am sure I didn't.

Q Who did that in your bank?

A Well, that would have been done by the loan department. It would have been done by the loan department, Mr. Landberg or Mr. Santoro, in his absence.

2B

Q What is the procedure that was in force at that time with respect to the sale of bonds of this kind that are brought in by an individual?

A The procedure other than --

Q Of the bank -- what would they do?

A Well, I would say that Santoro, for example, would call and get a quote, and --

Q Call whom, sir?

A The brokerage house that they were using.

Q That they, meaning the bank?

A Yes.

Q Go ahead.

A Get a quote, and if it was a quote acceptable to the customer for whom they were selling the securities, they would then execute the sale.

Q You wouldn't send the customer down to the broker?

A No.

Q The broker wouldn't care who the customer was when the conversation took place?

MR. HART: Objection, your Honor.

THE COURT: What is the objection?

MR.HART: He had no conversation with the broker.

THE COURT: He is asking him about the procedure.

MR. HALPERN: I am asking about custom and procedure at that time.

THE COURT: Overruled.

(Question read.)

A That is correct.

Q In other words, they took the order from the Royal Bank?

A Correct.

Q And they executed the order for the Royal Bank?

MR. JULIEN: I object to that. The documents show to whose account they executed these orders.

MR. HALPERN: I object to that statement by Mr. Julien.

THE COURT: I object to all the objections.

MR. HALPERN: I mean, if he says --

THE COURT: As far as I am concerned, he can answer the question.

THE WITNESS: What was the question?

(Question read.)

THE COURT: From the standpoint of procedure, the broker executed it for the account of the bank.

THE WITNESS: That is correct.

Q Do you remember being asked this question at page 125 of the criminal trial:

"Q Mr. Kayner, Merrill Lynch, Pierce, Fenner & Smith are brokers dealing in securities, right?

"A That is correct.

"Q And what connection did they have with the Royal Bank in connection with these transactions?

"MR. ROTGER: Objection.

"THE COURT: That is overruled.

"A They sold the bonds in question for the bank."

Do you remember so testifying?

A No, but I will accept that.

Q You will accept that?

A Yes.

"A Right.

"Q And the bank, the Royal National Bank, received confirmation of those bonds from Merrill Lynch, Pierce, Fenner & Smith, is that correct?

"A That is correct."

You said that, sir?

A Yes, sir.

MR. JULIEN: You are not going to drop the next question and answer, are you? That explains the entire thing.

MR. HALPERN: I make the same objection that you made before. You have a right to read it --

THE COURT: You may read it at this time.

MR. JULIEN: Next question, same page:

"Q And the Royal National Bank, in connection with these securities" --

MR. HALPERN: I object to that. I think it is highly irregular at this time.

THE COURT: I permitted it.

MR. HALPERN: I am sorry. I didn't hear you, Judge.

THE COURT: Your objection is overruled in advance of it.

MR. HALPERN: I have no objection.

THE COURT: All right, read it.

MR. JULIEN: Immediately after what counsel just read:

"Q And theR oyal National Bank, in connection with these securities,said, in delivering the securities to this broker, Merrill Lynch, Pierce, Fenner & Smith, they did it for the account of Frank Mazzochi, is that correct?

"A That is correct.

"Q As a matter of fact, throughout all these transactions, the name Frank Mazzochi was there, was it not?

"A That is correct."

MR. HALPERN: And the next question is:

"Q He didn't give you any transactions that he wanted in any other name, did he?

"A No, he didn.t"

Let's get the context of those questions.

THE COURT: Do you accept those as accurate?

THE WITNESS: Yes.

MR. HALPERN: Page 135, the same criminal testimony.

"Q Did the bank, in August and September of 1966, have a broker that sold treasury bonds?

"A Yes. We usually dealt through" --

MR. HART: Your Honor, I hate to interrupt, but I believe that counsel is reading from another deposition at this point, and I don't think that is clear.

MR. HALPERN: Then I will amend my question. I see it. You are right. I see Santoro on top.

Mr.Santoro, in testifying, stated under oath:

"Q Did the bank, in August and September of 1966, have a broker that sold treasury notes?

"A Yes. We usually dealt through Merrill Lynch, Pierce, Fenner & Smith with treasury bills and bonds.

Q I see."

MR. JULIEN: Why are we having the testimony of another witness read at this time?

MR. HALPERN: I am going to ask him if he subscribes to that if I asked him the same questions.

MR. JULIEN: It isn't a matter of subscribing. It is a matter of whether it refreshes his recollection.

THE COURT: Go ahead.

"Q I see, and the bank was a customer of Merrill Lynch, is that correct?

"A Right."

If I were to ask you these two questions, would you give any similar answer or other answers?

MR. JULIEN: Objection.

THE COURT: I will sustain the objection to the question and substitute for the question the question, "Do those questions and answers refresh your recollection as to what the practice was with respect to treasury bills in the 149thStreet branch of the Royal Bank in August of '66?"

THE WITNESS: No.

THE COURT: His answer is no.

MR. HART: Your Honor, in accordance with your prior ruling on the preceding page, there is a question and answer which bear directly on this point.

THE COURT: REad it.

MR. JULIEN: He said it doesn't refresh his recollection.

THE COURT: Maybe this will refresh his recollection.

MR. JULIEN: He is not examining.

MR. HALPERN: I have no objection to his reading it.

THE COURT: He has a right to read it in because he is in a position adverse to Mr. Halpern just as you are.

MR. HALPERN: As a matter of fact, I have no objection to him reading it.

BY MR. HART:

"Q And when you say stock and securities that are bought and sold by your customers, how did your department operate with regard to that?

"A Well, in other words, a customer would come in requesting either the purchase of securities or the sale, and we would work the transaction. We would be like the agent between the customer and the brokerage house. If the price was all right with them, what they decided on, we would buy or sell it through the broker."

And the question again would be, did that refresh the witness's recollection.

THE WITNESS: I had testified earlier that that was the procedure.

MR.JULIEN: No. He misunderstood.

THE WITNESS: It doesn't refresh my recollection with respect to that specifically.

MR. HALPERN: I have no further questions.

MR. JULIEN: I have a few questions, Judge.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. JULIEN:

Q IN this particular case, were you asked to hold up any sale of these bills until you secured a price and the customer ascertained whether that price was agreeable to him?

A I don't recall.

Q Don't you know that these bills were negotiated by your bank as agent for Mazzochi and it was only after the sale that he was notified of the price? Don't you know that?

MR. HALPERN: Objected to, the question itself.

THE COURT: Sustained.

Q Don't you know that the first time that Mazzochi learned what price the sale was going to take place at was after each sale took place?

MR. HALPERN: Objected to. The testimony elicited from Mr.Santoro, and I believe from this gentleman, is to the contrary.

MR. JULIEN: It is not. Santoro said --

MR. HALPERN: Please let me finish.

MR. JULIEN: Santoro said he had a telephone message to call after the sale was made, to let him know what the price was.

MR. HALPERN: What the quote was, if I remember his statement.

THE COURT: My recollection accords with Mr. Julien's, that he got the telephone number in the Bronx for purposes of advising Mr. Mazzochi of the price.

MR. HALPERN: Which is the quote. All right, I will accept that.

A My answer is no, I don't recall.

Q Anyway, in your single talk with Mazzochi, he didn't say to you,"Don't sell until youtell me what the price is." Did he?

A I don't recall.

Q You wouldn't recall any such testimony because it never happened, isn't that right?

MR. HALPERN: Objection.

THE COURT: He said he didn't recall.

Q Have you ever said to anyone, Mazzochi said "Don't sell it until you tell me what you are going to sell it for"?

ebb-10 Kayner-redirect

A I don't recall ever saying that.

Q And you know that didn't happen in this case, don't you?

MR. HALPERN: Objection.

THE COURT: Sustained.

Q From everything you gathered from this man in that one talk, he was anxious to dispose of it and never raised any point about price?

MR. HALPERN: Objection to this.

THE COURT: Sustained.

Q Didn't that strike you as curious, or doesn't it strike you as curious that somebody coming in with securities doesn't inquire about price but wants them sold, and wants to get cash as quickly as possible?

MR. HALPERN: Objection.

THE COURT: I am permitting you some latitude in recross-examination, but you know, this is not, inasmuch as you claim that they are examining directly, this is not within the scope of their direct examination.

MR. JULIEN: I have in mind, sir --

THE COURT: And furthermore, this is so repetitious that I am about to become very annoyed.

MR. JULIEN: I would not risk annoying your Honor for all the evidence in the case.

THE COURT: Believe me, it takes a long time but I get there.

MR. JULIEN: Because we are both young men and I will be before you many times in a learned career.

THE COURT: I have sustained their objections to that.

MR. JULIEN: I have this in mind.

THE COURT: Let's conclude his recross-examination.

MR. JULIEN: He has been asked about practices, your Honor, and when he is asked about practices, this broadens the ambit of cross-examination very considerably because if he says the practice is such and such, I am entitled to ask, "Weren't you affected by this? Weren't you affected by that? Wouldn't that make a difference in your judgment-making?" As he brought out.

I am entitled to all of that, sir.

THE COURT: In your judgment you are, and in my judgment you are not with respect to the question you just asked, so that is where we are.

MR. JULIEN: All right. Now, I will have to ask some questions and your Honor can rule on them. I certainly will not attempt to be repetitious.

THE COURT: You try.

Q You told counsel for the bank that you formed

a judgment as to whether or not he was in rightful possession of these securities? Right?

A Yes.

Q Wouldn't the amount of the securities compared with the amount of transactions that the bank had ever had with this man have some weight in making such a judgment?

MR. HALPERN: Objected to. He already said he made that judgment.

THE COURT: I will let him answer the question, Mr. Halpern.

A Well, that is a very subjective question, and I will give you the best answer. It might have had some weight in my original judgment and apparently my judgment was that it wasn't --

Q We know what your judgment was,and would I be wrong in saying that you want to defend your judgment?

MR. HART: Objection.

THE COURT: Certainly he wants to defend his judgment.

A Yes.

Q Now, previously the only account that you knew him to be with you said was an account that had a running balance of a thousand or two thousand dollars?

A I didn't say that.

MR. HALPERN: That is not redirect.

THE COURT: That is repetitious. That is repetitious.

Don't let us assume another account with a couple of thousand dollars, please.

MR. JULIEN: I am asking an expert. I am attempting to cross-examine the expert who they made an expert by asking him for judgmental decisions. Was there a practice? Did you make a judgment? I am entitled to attack that and find out what elements he considered and which he didn't consider.

THE COURT: Unfortunately you are not doing that, though.

MR. JULIEN: All right, I will try. I will try.

Q Did the size of the transaction that you were handling for this man, did that make a difference to you?

MR. HALPERN: Objected to. Brought out on the original examination.

THE COURT: And asked again here just a moment ago.

MR. HALPERN: Yes, and your Honor ruled on it.

THE COURT: And I let you ask him. I am not going to let you ask him again.

3A

Q You talked about -- in response to Mr. Hart's question you talked about other business accounts which this man might have been affiliated with in the bank. Would the size, the activity, of those accounts make a difference to you?

A They would have entered into my overall judgment.

Q Did you know that in June of 1966 one of his bank accounts had been closed? Did you know that?

A I may have known it at that time.

Q You probably did at that time, right?

A Right.

Q Did you know that in another of his accounts there was a notation "Do not pay against uncollected funds"? Did you know that?

A I may have known it.

Q At that time?

A At that time.

Q All these things enter into your judgment in deciding whether it was proper practice to extend $140,000 to this man and allow him to take it out in cash?

MR. HART: Objection, your Honor.

THE COURT: I will sustain that objec-

tion.

Q Did these things enter into your judgment.

A All the information I would have had would have entered into my judgment.

Q How much weight did you give the fact that your own bank said don't pay against uncollected funds in one of its small business accounts?

MR. HART: Objection, your Honor.

THE COURT: Sustained.

Q I assume you knew that at that time his two business accounts were relatively inactive? You knew that?

A Again, I will assume that I knew it at that time.

Q Did that enter into your judgment too? Did it?

A I'm sure everything, I just said before --

Q How much weight did you give to that?

MR. HART: Objection, your Honor.

THE COURT: Sustained.

Q Did you know that even with respect to these two small accounts, addresses given by this man were in Brooklyn and you were with this branch up in the Bronx? Did you consider that at all?

MR. HART: Objection, your Honor. There is a lot of material that I don't believe is in evidence.

THE COURT: Look, you called this man. He is your witness.

MR. JULIEN: I didn't call him as an expert. They did that.

THE COURT: You called him as your witness.

MR. JULIEN: They made him an expert.

THE COURT: The facts that you are now reciting are something which you never brought out.

MR. JULIEN: Yes, but they made him an expert and in testing an expert I can ask him to assume certain facts which I will tell the court I will put in evidence in no time at all.

THE COURT: I am going to cut you off pretty quickly.

Q Would the fact that every address this man ever gave you for his small accounts, business, was listed in Brooklyn, and that the address he gave in opening this account to get the money out of the Treasury notes was in Brooklyn -- did you give any weight at all to that fact?

MR. HART: Objection, your Honor. This is another in a series of witnesses that said he considered everything.

MR. JULIEN: I don't have to accept his blanket statements. That's what cross examination is all about, your Honor, particularly when they made an expert out of somebody I thought was just a fact witness.

THE COURT: He said he considered all of these factors, and the question of how much weight he gave that and this in every case an objection will be sustained to.

MR. JULIEN: May the record deem that I would have asked that question about weight with respect to each of the elements?

THE COURT: About every time.

MR. JULIEN: All right

At least you are amused, gentlemen. You come here from some other state and I amuse you.

MR. HALPERN: I can't hear a thing he said.

MR. HART: He just insulted my colleague.

BY MR. JULIEN:

Q Some of the criteria you told Mr. Hart about was that if somebody came in with notes you would want

to know, you would want to be satisfied as to who he is and how responsible he is; true?

A Yes, that's true.

Q Well, since you had no personal transactions with this man, and since he told you the notes weren't his, and you made no check of any kind, as you told us, you did nothing to determine his responsibility, did you?

MR. HALPERN: Objected to.

MR. HART: Objection.

THE COURT: Sustained.

Q So far as his personal wealth was concerned, or lack of it, that was a matter that you were completely strange about?

MR. HALPERN: Objected to.

THE COURT: Sustained.

MR. JULIEN: On the ground that we have had it?

THE COURT: You have had it. You have really had it, believe me.

MR. HALPERN: I have had it too.

Q Now, you told his Honor, I believe, that if a stranger came in, even if he showed you some credentials, you would want to check on bank references.

Do you remember saying that?

A That's correct.

Q Now, just the fact that the man had possession of these bearer notes would not satisfy you of itself, would it?

A No.

Q And you would want to know something about background, yes?

A Yes.

Q And as to reliability, yes?

A Yes.

Q And you surely asked him if he owned the notes; wouldn't you?

A I am sure I would, if we got to that point.

Q And he told you he didn't own the notes so you would want to go much further into investigating it, yes?

A I would imagine so, if he was a stranger.

Q And even if this little, old housewife that you told us about, who had an account with you for 10 years, brought somebody in and introduced that somebody to you, if it was a transaction involving Treasury bills amounting to any large amount running into four figures, that alone wouldn't be enough for you, would it; just

that your own depositor introduced this party?

A Probably not.

Q You would want to check on his business, his address, right?

MR. HART: Objection, your Honor.

THE COURT: No.

A We would want to do a check as to his reliability and so forth.

Q That would even be the case if the person, the housewife depositor brought in, claimed to be the owner of the notes, you would want to check that?

A Well, that would be a little different because there we have already had a relationship for some time.

Q Not the housewife, the stranger that the housewife produced, if he said he was the owner of the notes, you would still want to check all these things out?

A Certainly.

Q That would be proper banking practice, right?

A Right.

Q One other thing this gentleman, Mr. Hart, asked you. Did you make a determination whether the man sitting opposite you, Mr. Mazzochi, asking you to

sell stuff that he didn't own himself, whether he was lying -- you were asked that by the lawyer -- had you ever interrogated Mazzochi before with respect to anything else?

A I doubt it.

Q Had you had any prior experience with him face to face in testing whether his assertions in fact were true or false?

A I don't recall.

Q You doubt that too, don't you?

MR. HART: Objection, your Honor.

Q Do you doubt it?

A I doubt it.

Q So that you had no previous face-to-face basis upon which to reach this evaluation that you gave this lawyer that you thought he was not lying?

MR. HART: Objection, your Honor.

THE COURT: I will sustain the objection.

Q And just by taking his word for it you did nothing to check reliability, address, or anything else?

MR. HALPERN: This is about the fourth time. I object to it.

THE COURT: Yes, I will sustain the objec-

tion to that.

Q Just one final subject and I will be done.

The size of the transaction which began --

THE COURT: Now, I am going to stop you right there. The minute you get into size you are being repetitious.

Now go to something else.

MR. JULIEN: If you hear me out, I don't think you will consider it repetitious. The size of this transaction changed from beginning to later on.

THE COURT: I don't know how it changed. According to your contention this $70,000 first transaction, both happened on the same day: there was another 70,000 and another 70,000, so you have got $210,000-odd. You are still talking about size.

MR. JULIEN: You don't want me to pursue it?

THE COURT: No.

MR. JULIEN: May I put the question and then your Honor can rule on it?

THE COURT: Sure, go ahead and put the question.

Q Doesn't [illegible] increase in the size of this transaction, as it increased up to August 9th when you

made your third approval of receiving notes up to the extent of $140,000, didn't that weigh with you in making any deliberations as to proper practice with respect to --

MR. HALPERN: Objected to.

THE COURT: I will sustain that objection.

MR. JULIEN: All right.

MR. HART: With the court's permission, one factual question which I don't believe will open up any broad areas.

RECROSS EXAMINATION

BY MR. HART:

Q Mr. Kayner, when did you leave the 149th Street branch of the Royal National Bank?

A Approximately September, A66.

Q Can you tell us when in September of 1966?

A I think it was around Labor Day or it might have been the 1st of September. I know it was the early part of September.

Q And where did you go and why did you leave?

A I became the manager of the Queens branch of the Royal National Bank.

MR. HART: No further questions.

MR. HALPERN: I have no questions.

THE COURT: All right, you are excused.

(Witness excused.)

THE COURT: We will take our afternoon recess. We may go a little later, gentlemen. The matter that I had on this afternoon was called off.

Incidentally, I would like to say, did someone mention a case here called Bunge at 31 N.Y. 2d?

MR. HALPERN: That is true, your Honor.

THE COURT: You are aware of that, Mr. Julien?

MR. JULIEN: I am sure we have been aware of it.

MR. HALPERN: Have you got the Court of Appeals decision? Judge Fine originally granted a summary judgment on that and then it --

THE COURT: Yes, I understand.

MR. HALPERN: It's the Bunge Corporation.

MR. JULIEN: Your Honor, before taking our recess, can we have a little side-bar conference with you, Judge?

THE COURT: Say it right now, right out.

MR. JULIEN: Well, my next witness will require that exchange of documentation which I am ready to make, but I am sure that counsel will want some

time, surely by tomorrow morning,to do that.

THE COURT: What do you mean by that?

MR. HALPERN: You mean he's an expert?

MR. JULIEN: Yes.

THE COURT: Haven't we got anybody else that we can put on?

MR. JULIEN: Well, we --

THE COURT: I thought you were going to put him on in rebuttal. There is no rebuttal here and, for the record, I would like to say that I didn't consider Mr. Kayner in any way an expert. I asked him what the usual practices were at the bank; not what is the practice in the banking industry, just what his practice was.

MR. JULIEN: Well, what I would like to do, Judge, is exchange with counsel the reports, in any event, and start with this witness tomorrow morning.

THE COURT: You mean and leave off this afternoon?

MR. JULIEN: Of course.

THE COURT: We are going too slowly anyway.

MR. JULIEN: Judge, I feel as though I am -- we are moving so rapidly.

THE COURT: We are not moving rapidly at all.

MR. JULIEN: If we had a jury by this time you know we wouldn't nearly be as far gone as we are.

THE COURT: If we had a jury by this time believe me you would have a mistrial.

MR. JULIEN: You can indulge us a half hour, Judge.

THE COURT: You want to work until 6 o'clock tomorrow night?

MR. JULIEN: What is tomorrow, Friday?

THE COURT: Friday. You are not going to catch the 4:16.

Haven't you got another witness that you can put on at this time?

MR. JULIEN: That's the only one I have.

THE COURT: We had a whole roomful of people.

MR. JULIEN: We have sliced it down to try to meet these requirements, your Honor.

THE COURT: What about your friend we had on the first thing this morning? Aren't you going to call him back, Mr. Carter?

MR. JULIEN: He hasn't got the record. What can I do with him. He is going to have to call him.

MR. HART: Do I understand also that the witnesses that you had subpoenaed you will not be calling?

I ask that, your Honor, because I had not made my own arrangements with those witnesses who were subject to the subopena on the understanding that they would be here subject to subpoena, and I would have to make arrangements with Mr. Walter --

MR. JULIEN: Mr. Walter I am not calling. Stolls I am not calling.

MR. HART: They were both subpoenaed, your Honor, and I didn't make my own arrangements with them.

THE COURT: Who are you calling in addition to your expert? I will give you a chance to think that over and you can have him here when I come back after recess.

(Adjourned to August 8, 1975, at 9:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
William Carter	150			
Robert I. Kayner (Resumed)	156	245	278	
Stephen Weis	232	235		

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
34		177
43		228

Defendants		
G		267

UNITED STATES FIDELITY & GUARANTY CO.,

vs.

ROYAL NATIONAL BANK OF NEW YORK, MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.

New York, August 8, 1975

9:00 a.m.

Trial resumed.

- -

MR. JULIEN: If your Honor please, I'm going to offer in evidence the two depositions of Mr. and Mrs. Mazzochi, the parents of Frank Mazzochi, Jr. I believe you do have a copy of that, sir.

THE COURT: That I have. That's Anna? Is it Anna Mazzochi?

MR. JULIEN: Yes, sir. And Frank, Sr.

THE COURT: Frank, Sr., fine.

MR. JULIEN: Very good.

MR. HART: It is not necessary to say no objection, is it?

THE COURT: No, it is not. They are in. I have copies here. Why don't you mark these in.

MR. JULIEN: I'm marking my next exhibit.

THE COURT: All right, fine.

MR. JULIEN: Should it be mared as an exhibit, sir? Perhaps it should.

THE COURT: I think so, sure.

MR. JULIEN: Yes. That will be No. 44, if your Honor please.

(Plaintiff's Exhibit 44 was received in evidence.)

MR. HART: At the risk of seeming obtuse on this subject, is there any significance in marking these exhibits? They are all deemed to be in evidence.

THE COURT: Yes, but I would prefer to have them marked so we know what we are referring to when we refer to Mazzochi somewhere along the line. I've had it happen when you have two depositions in persons of similar names where, in referring to them, they have just referred to the last name. They don't know which.

MR. HART: We are making an exception with the Mazzochi depositions because of the similarity in names.

THE COURT: Yes.

MR. JULIEN: I'm not granting that without somebody saying: I'm offering a certain deposition, that it is in evidence. We are not just considering

the blanket reception of all these depositions. Somebody has to say: I offer these.

THE COURT: Yes. Whatever you want to use.

MR. HART: I thought somebody could say it in a trial brief, making reference to the depositions, and that would be the same.

THE COURT: I think you ought to say it here for the record when you offer it.

MR. JULIEN: I next offer in evidence, if your Honor please, all of the remaining checks drawn by Mr. Macchezi against his account, the cash checks, withdrawing the sums from the bank, and we will do the slicing up. I don't want to delay for that.

MR. HART: With the court's permission, I will have no objection on it subject to examining them and making sure they are all of the checks. But there's no sense in doing it now if Mr. Julien intends to use it now.

THE COURT: All right. 45, subject to that reservation.

(Plaintiff's Exhibit 45 was received in evidence.)

THOMAS O. ROCKAFELLER, called as a witness by plaintiff, being first duly sworn, testified as follows:

MR. JULIEN: Counsel have already received this. This is the report, your Honor.

THE COURT: All right.

MR. JULIEN: I think it ought to be stated for the record, your Honor, because I think our conference on this subject is not recorded, that counsel have agreed before the court in conference that with respect to the expert witnesses, their qualifications and opinion shall be stated in writing and the writing will be received after the witness says he would so testify under oath as his direct examination on opinion matters, subject, of course, to cross examination and rebuttal, should it be required.

THE COURT: Yes.

MR. JULIEN: All right. So with that in mind, I will offer in evidence the statement of opinion signed by Mr. Rockafeller, and which was delivered to counsel yesterday and to the court this morning. I offer that as the next exhibit.

THE COURT: Yes.

MR. JULIEN: It will be Exhibit 46, your

Honor.

(Plaintiff's Exhibit 46 was received in evidence.)

DIRECT EXAMINATION

BY MR. JULIEN:

Q Mr. Rockafeller, would you tell us what was your business back in 1966?

A In 1966 I was assistant manager of the operations division of W. E. Hutton Company. I was responsible for the administration of the day-to-day operations of the brokerage firm, which included supervising the cashier's department, credit department and the other various operating areas of the brokerage firm.

I had nothing to do with the buying and selling of securities as a salesman.

Q I'm not going to go into any of your qualifications or past experience excepting just to inquire how long you had been with the Hutton firm up to 1966.

A I started in 1959 with the Hutton firm. I was there for seven years.

MR. JULIEN: We will deem, I'm sure, your Honor, that the qualifications stated in the last exhibit

received will also apply as to this portion of the fact testimony.

Is that all right?

THE COURT: I certainly have no objection. I'm assuming Mr. Halpern and Mr. Hart have no objection.

MR. HART: No, sir.

Q In the regular course of your duties during the months of either August or September, or both, was your attention directed to some possibility of any missing securities of the firm Hutton & Company?

A Yes, it was. We had a periodic inventory taken of our government securities, and in --

Q Might I interrupt to inquire where government securities of the Hutton firm were kept?

A They are retained in the vault in the basement of the Bankers Trust Company at 14 Wall Street.

Q Yes. You were telling us that there was an inventory taken or periodic inventories?

A Yes.

Q And?

A And it was found that we were short a particular amount of securities.

Q Could you fix, as best as you can, when the

shortage first was brought to your attention. Approximately will do at this juncture.

A Oh, it was the latter part of August, early September.

Q All right.

Did it become the duty of yourself and your department to inquire into that and to ascertain what, if anything, was missing?

A Absolutely.

Q That's part of your job?

A Absolutely.

Q Did your company feel immediately that there was -- that a theft had taken place.

MR. HELPERN: Object to what the company felt.

THE COURT: Sustained.

Q Or did you?

A No. It's very frequently when you count securities.

MR. HALPERN: I object to anything after the "No."

Q You tell us about the practice with respect to discoveries of shortages in your firm. Tell us what is done and how you go about it.

A Frist we search the entire vault area to see if perhaps the securities may have been misfiled, We have to ascertain whether or not some securities had been perhaps misdelivered or thrown out, fallen in the waste basket, and we even have to go so far as to search through the trash, which was retained by the bank in those days, bag and tag, with the date of the trash collection. And we went through all those procedures.

Q Have you on other occasions discovered missing securities in this fashion?

A Yes.

MR. HART: I'll object to that unless the witness establishes it as being prior to the occasion.

MR. JULIEN: Of course, I'm talking about prior to.

Q You understand that, Mr. Rockafeller?

A Absolutely.

Q Have you described in all its respects the kind of search which was put on under your supervision in your department?

A Yes.

Q What, if anything, was done to ascertain the serial number or nature of missing securities?

A After we had completed our search, it was obvious we hadn't come up with the missing securities. So we went to the last interest payment date and found what we had in our possession on that date, and took the record of the serial numbers on which interest had been paid, compared those numbers to the ones we had on hand then, and after accounting for any deliveries or additional securities which we may have received in, we came up with certain numbers which were definitely not there that should have been there.

MR. HART: I am sorry. I didn't hear the last few words.

THE WITNESS: We came up with a group of serial numbers which were not there. They should have been there.

Q So that I can cover the subject in one fell swoop, did your company ever ascertain or did anyone ever ascertain how those securities go away from the vault?

A Never.

Q I show you Plaintiff's Exhibit 1 and I ask you whether this letter under your signature and the listing of securities attached thereto were prepared under your care and supervision after this examination which you have described took place.

A That's correct. They were -- this was prepared by myself.

Q And sent on to your --

A And sent to our agent in Cincinnati.

Q That's your insurance agent?

A Yes.

Q Is that something done by you in the regular and ordinary course of the business on such occasions where this kind of missing securities turns up in your business?

A Yes, it is.

MR. JULIEN: I offer it in evidence.

MR. HALPERN: I believe that Mr. Julien means the broker, not the agent, when he testified to --

MR. JULIEN: You mean the insurance broker?

MR. HALPERN: Yes. He said "our agent."

MR. JULIEN: All right. Yes.

THE COURT: All right.

MR. HART: May I have a voir dire, your Honor?

THE COURT: Sure.

VOIR DIRE EXAMINATION

BY MR. HART:

Q Mr. Rockafeller, did you state that you personally prepared this list?

A Yes, I did.

Q Is that your writing at the bottom of the list?

A Yes, it is.

Q I believe that you said that when you discovered that there seemed to be a shortage you went back to a listing that was made at the last interest payment date; is that correct?

MR. JULIEN Not voir dire. I object to it.

THE COURT: It is not voir dire. You will have an opportunity.

MR. JULIEN: That's all right.

MR. HART: No, your Honor, I believe that this record is not a regular business record.

MR. JULIEN: That's for cross examination. This is only foundation. That's all I need.

MR. HART: I am objecting to it, your Honor, as incompetent.

THE COURT: You are objecting to it

as incompetent. Let me see it.

MR. HART: It is hearsay, not the best evidence and a summary of material which is not in evidence and which has not been made available. It is a summary of material which has not been made available.

MR. JULIEN: I do'nt think counsel means that this document has not been made available. Of course it was given to them before.

THE COURT: This has been made available you before.

MR. HART: Yes, that document was made available during the examination of USF&G, but the material upon which it was based,and admittedly that is a compilation and an extraction, that material has never been made available and its absence has never been explained.

MR. JULIEN: That doesn't affect the admissibility at all.

THE COURT: It may be received.

(Plaintiff's Exhibit 1 was received in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. JULIEN:

Q I want you to keep before you --

MR. JULIEN: Do we have another copy of that that we could hand to the court? At least of the list. Not as clear as I would like it, your Honor, but it is a copy of the list of Exhibit 1.

Q At the time your list was prepared, sir, had you seen or did you know of any of the documentation which is Exhibit 8 or any of the correspondence or documentation which had passed between Merrill Lynch and the Royal National Bank affecting the sale of some securities, Treasury notes, in August and September reading for the account of Frank Mazzochi?

A No, I don't know.

Q I am going to read to you from Exhibit 8 certain numbers of Treasury notes transmitted by Royal National Bank for the account of Frank Mazzochi, Jr. to Merrill Lynch, Pierce, Fenner & Smith.

MR. HALPERN: I object to that as not being a fact. The bonds were not transmitted to Merrill Lynch. They were transmitted to the bank, the Manufacturers Trust. It says so right on there.

MR. JULIEN: It doesn't say so. Look at

it. I'm reading just as it is.

MR. HALPERN: All right. I will take the other exhibit.

THE COURT: Let me see it.

MR. JULIEN: The last was the only one taht ever says that. All others say to Merrill Lynch, and the one I was reading was to Merrill Lynch.

THE COURT: They are all Merrill Lynch except the one that is Manufacturers.

MR. JULIEN: Yes.

Q I am reading from Exhibit 8, Mr. Rockafeller, and the first date of August 5, 1966, dealing with a $10,000 U. S. Treasury note, 5 per cent, in No. 112255.

Does that anywhere appear on your list attached which is part of Exhibit A?

A Yes, it does.

Q I now turn to page 2 of Exhibit 8, likewise dated August 5, 1966, the same -- addressed to the same people for the same account, $60,000 of Treasury notes due November 15, 1970, United States of America, 5 per cent. The first number, 117851, does that appear?

A No.

Q 112248, does that appear?

A Yes.

Q 112243, does that appear?

A I am sorry, I didn't hear the number.

Q 112243.

A Yes.

Q 111901, does that appear?

A Yes,it does.

Q Mr. Rockafeller, I am going to take you back to the first one, 117851, which you said doesn't appear. Would you look in the right-hand column, please?

A Oh, I beg your pardon. It is there.

Q It is there.

A Sorry.

Q So that every one I have read up to the present moment is in your list?

A That's right.they are all on this list.

Q All right. 111901, does that appear on your list?

A Yes,it does.

Q 111900?

A Yes, it is there.

Q 3131?

A Yes.

A Yes.

Q Allright. Now we turn to the third page of the exhibit 8, dated August 10, 1966, same addressee, same account. 70,000 U.S.American Treasury notes 5 per cent, due November 15, 1970. The first one lists from 11786 to 8.

A Yes, there is three bonds.

Q There are three bonds?

A That's right.

Q This first listing on this third page of Exhibit 8, where there is a slash from 117186, a slash 8, but of course --

A That means sequential. There is $30,000 worth of bonds.

Q You have all three numbers on your list?

A Yes. Yes.

Q 117182?

A Yes, I have it.

Q 112307?

A Yes.

Q 112271?

A Yes.

Q 112254?

A Yes.

Q On the final page of that exhibit in this instance the addressee is Merrill Lynch,Pierce, Fenner & Smith, care of Manufacturers Hanover Trust, and this is dated September 12, 1966, listing 72,00 par value, same type of notes. In this instance I am going to start from the bottom and go towards the top. 117185?

A Yes.

Q 117184?

A Yes.

Q 117183?

A Yes.

Q 109144?

A Yes.

Q 1925?

A Yes.

Q 35058?

A Yes.

Q 22827?

A Yes.

Q 2995, the right-hand column.

A Would you repeat that number, please?

Q I have it as 2995 on this exhibit. Do you have any number which while not exactly that corresponds with respect to any of the digits?

MR. HALPERN: Objection.

MR. HART: Objection, your Honor.

MR.JULIEN: I am going to show that this is in their case, if your Honor please, that they have set forth the wrong number.

MR. HART: That they have?

MR. HALPERN: He can't show it through this witness.

THE COURT: They have set forth the same number. You can't show it through this witness.

MR. JULIEN: I am not saying they match, your Honor, subject to what is happening I am telling you --

THE COURT: It doesn't have a number which is on that list.

Q We don't have that number. Do you have any number --

THE COURT: Don't say do you have any number, There is no number, that number, period.

Q 2114?

A No.

Q Do you have 2166?

A Yes.

Q The last two, I mean, the first two on page 9, the fourth page of Exhibit 8 on this one dated September

12, 1966, the number if 19368 and 19369. Were they numbers of yours?

A No.

Q They were not. I want to return to 2114, did you have any securities in this same series which were missing from your firm starting with the digit 2?

A Yes.

Q What was that?

A 2214 for $5000 face value.

MR. HART: I object to the answers being incomplete. I know at least four numbers that begin with the digit 2. Furthermore I object to the line of questioning on grounds that the witness has identified the numbers as requested by counsel.

MR. JULIEN: I am asking him whether there is one that has not matched up starting with the digit 2, and this is the one that he has just mentioned.

THE COURT: I will let it stand.

Q Referring back to 2995, did your firm have a security of the same series starting with the digit 2, which is not in the listing that I read from Exhibit 8?

MR. HART: Same objection.

MR. HALPERN: I object to it as irrelevant. Whether they had it or not is immaterial.

MR. JULIEN: It is not a bit irrelevant.

THE COURT: I will accept that objection.

MR. JULIEN: That it is irrelevant?

THE COURT: It is immaterial whether they had bonds in that series.

MR. JULIEN: Your Honor, three out of four digits are precisely the same. This is something that happened in their office.

THE COURT: I will let you sit down and be the witness, Mr. Julien, any day you want to be. But until that time please, leave the comments alone. It is completely immaterial.

Let's go on.

Q What was the total amount in securities which were missing from the vault of your company?

A Par value of $215,000.

THE COURT: I may have missed it somewhere, but there was one other security on here, five thousand 31606. Did you read that number?

MR. JULIEN: Which one?

THE COURT: I am looking at the list, it is 31606.

MR. HART: There will be evidence on 31606, your Honor.

THE COURT: It is not on the list?

MR. HART: That's right.

THE COURT: It is not on these exhibits. It is on the list that we have gotten from Hutton,but it is not on the --

MR. JULIEN: While we have the witness here, what do you mean there will be evidence on it?

MR. HART: In the deposition taken of the chief of theBureau of the Public Debt, it was determined that certificate number 31606 was turned in by Hutton to the Government for a denominational exchange in May of 1966.

MR. JULIEN: All right. That is where it is not in this list.

Q Now, what is the amount, the denomination of 31606?

A That was a $50000 bond.

Q Deducting that one bond, there was total missing of $210,000?

A That's right.

MR. HART: Objection, your Honor.

THE COURT: Why?

MR. HART: The arithmetic speaks for itself.

MR.JULIEN: Then you are taking more time

with your objection than the arithmetic speaking for itself.

THE COURT: That is true, the arithmetic speaks for itself.

Q In the totalamount of bonds negotiated according to evidence here, by Merrill Lynch,Pierce on the Mazzochi account from Royal National Bank, there is a total of $212,000. Did you have in your list of missing securities any security in these treasury notes of the denomination of either $1000 or $2000?

MR. HALPERN: I am objecting to the form of the question. These bonds were not negotiated by Merrill Lynch for the Mazzochi account, they were negotiated for the Royal Bank.

MR. JULIEN: That is a question his Honor is going to decide.

MR. HALPERN: But I object to the form of his question.

THE COURT: I will let his question stand.

A No.

Q No ones or twos?

A No.

MR. JULIEN: Excuse me a moment, sir.

Q All right. Now, what was the date when the

list was drawn and when you were able to list your missing securities in this treasury note series?

A September 27, 1966.

Q After that time was your loss paid by the USF&G?

A Yes, it was.

Q Do you know the amount that was received by you or your firm from USF&G?

MR. HALPERN: I have no objection to the draft being put into evidence. There is a draft. I have no objection.

MR.JULIEN: There is a draft.

MR.HALPERN: Just to save time.

MR. JULIEN: All right. We will get the draft in just a moment.

Q With respect to these --

MR.JULIEN: I assume, your Honor, that counsel will concede that the fair market value of the notes which have been identified are the amounts which Merrill Lynch, Fenner and so forth, sold it for on the date of sale.

MR. HALPERN: I have no objection.

THE COURT: That is no problem.

MR. HALPERN: I would add one other thing. Replacement amount would be there. That is what your

bond calls for.

THE COURT: The replacement amount would be the same.

MR. JULIEN: So it is both, the market value and the replacement.

MR. HALPERN: I just said that.

MR. JULIEN: All right.

Q I show you Exhibit 2 for identification and ask you whether that would refresh your recollection as to the amount received from the USF&G?

A Yes. This indicates that we purchased --

MR. HART: I have no objection to it going into evidence, but the witness is reading from it.

MR. JULIEN: All right, no objection. I will offer it.

MR. HALPERN: May I see it, please?

MR. JULIEN: Sure.

MR. HALPERN: Looking at this draft, Hutton bought in the number of shares for the number of stock and that the USF&G reimbursed Hutton for the purchase.

MR. HART: In other words, your Honor, this is not a draft, it is a broker's confirmation slip, evidencing the purchase by Hutton of securities.

MR. JULIEN: Replacement.

MR. HART: It evidences the purchase of securities.

MR. HALPERN: I have no objection to it being put in, but I just wanted to give the character.

Is that correct?

THE WITNESS: That is correct.

xxx (Plaintiff's Exhibit 2 was received in evidence.)

Q Does this represent the loss paid to your company pursuant to the letter Plaintiff's Exhibit 1?

A Yes.

Q Counsel, Mr. Hart has directed my attention to some information which he says he will present to the Court with respect to a $5000 treasury note, the one which you found didn't correspond or you couldn't find in Exhibit 8, and if we deduct $5000 from this amount which you demanded and received, that would leave $212,202.59.

MR. HALPERN: I object to that. It has already been gone into. We conceded a mathematical computation. I don't know why we are wasting time on it.

THE COURT: I would prefer to have Mr. Rockafeller do it, not Mr. Julien.

MR.JULIEN: I would, too.

THE COURT: Is it 212,202.59, deducting the 5000?

THE WITNESS: Give or take the interest, yes.

THE COURT: All right.

Q When was it that your concern finally got total knowledge of what was missing and the nature of what was missing?

MR. HALPERN: I object to the form of the question. When did he get knowledge, that is important.

Q All right. I will put it in that form.

THE COURT: All right.

Q Very good. When did you get knowledge, total knowledge of what was missing and their numbers?

A September 27.

Q Following that date, were you in touch with the insurance people, USF&G, concerning your loss?

MR. HALPERN: Objected to as immaterial.

THE COURT: I will let him answer it.

A Yes.

Q Did there come some time when authorities were notified concerning this loss?

MR. HALPERN: Objected to. By whom and where does he base his knowledge on.

MR. JULIEN: All right. I will withdraw it.

You may examine, gentlemen.

CROSS-EXAMINATION

BY MR. HART:

Q In 1966, Mr. Rockafeller, you were assistant operations manager, is that correct?

A That's right.

Q Who was the operations manager?

A James Barbi.

Q Was he a partner in the firm at that time?

A Yes, he was.

Q Were you?

A No, I was not.

Q I believe that you stated that you never learned the circumstances surrounding the absence of the notes on the list which you have prepared from the vault in which they were maintained by Hutton, is that correct?

A That's right.

Q But that list, Exhibit 47, contains all of the numbers that were missing from the vault?

A That's right.

MR. HART: Your Honor, at this point I would move to strike from evidence any testimony and any documentary material to the extent that it relates to any numbers other than the numbers which appear on Exhibit 47.

MR. JULIEN: Your Honor, the weight to be

given to that is something that is at the conclusion of the trial. It may be preliminary to other things with respect to it.

THE COURT: Yes, that is denied.

Q You said that you had prior losses of this type, I believe, is that correct? Was that at W.E. Hutton?

A Yes.

Q Would you tell us what thoseprior losses were, when they occurred and what the circumstances were?

A I think what -- you misunderstood what I said. I meant to indicate that we had shortages indicated after we had taken inventories. Generally speaking they are all resolved. They are simply accounting differences of some sort.

Q You mean by that that there were occasions when uponthe taking of a routine inventory, the inventory didn't seem to check out so you went back and redid the inventory and found there was an error?

A That's right.

Q So then you never had missing securities in the sense that you couldn't locate them, where they were supposed to be, prior to this occasion, is that correct?

A I can't say that.

Q In your experience at Hutton.

A Well, we have had losses before and after, and I honestly can't remember whether there had been any before in my tenure at that point or not.

Q Mr.Barbi testified at page 42 of an examination before trial --

MR. JULIEN: Just wait a minute.

I will have to get that.

2nd 1B THE COURT: I don't know whether Mr. Halpern is ready.

MR. JULIEN: What page did you say?

MR. HART: I had said 43, but I would like to first go to page 39, and with counsel's permission, I will simply read three lines beginning at line 20, unless counsel wishes the entire question and answer read.

MR. JULIEN: Do you want to start at 19? Is that it?

MR. HART: Yes, line 19.

MR. JULIEN: I have no objectionto that.

Q Mr.Barbi said, "The firm was --"

MR. JULIEN: I think you have to read the question.

"Q Did you report this loss to the police or to any other authorities?" That is at line 13.

MR. JULIEN: You can't do it that way. You have to read the questinn as amended by your statement when he first learned of the loss, when he first received the report. Now read the answer.

MR. HART: I will read the entire transcript.

MR. JULIEN: Yes.

MR. HART: I will go back to line 8.

"Q As soon as you learned about this, did you immediately know this was bearer paper or bearer securities that were missing?

"A It was evident from the description.

"Q Did you report this loss to the police or to any other authorities?

"Mr.Epstein: At what time?

"Mr. Hart: When he first learned of the loss, when he first received the report.

"A The first people we contacted was our insurance carrier. The firm was, including myself, relatively unsophisticated in what you do when you are not able to physically locate a certificate, security."

Then at page 42, at line 3:

"Q The theft perhaps of instruments, you say, were rare in your experience?

"A Relatively rare. I have no knowledge of another one that I know of that took place before this one."

Does that refresh your recollection as to whether there were any such occurrences prior to this occurrence at W.E. Hutton?

A I would have to agree with Barbi on that.

Q You accept his statement of it being incorrect?

A Oh, yes.

Q You have no recollection of these certificate numbers yourself, do you? You don't remember the numbers except what you see on apiece of paper, correct?

A No.

Q You said, I believe, that in trying to discover what notes or certificates were missing, you went back to a list that was prepared at the last interest payment date?

A That's right.

Q Would you tell us about that document, please, describe it, tell us what it is, who prepared it?

A It is prepared by a clerk whose responsibility it is to clip the coupons on the -- or prior to the interest payment dates that they may be presented to the bank-- yes, to the bank for payment or payable date. So he has to have a record of the certificates he has clipped the coupons on.

Q What form did that record take?

A It was a hand record.

Q A handwritten list of numbers?

A Yes.

Q Did he write it in a book, a piece of paper or what?

A Wrote it on a piece of paper.

Q Do you know where that list is?

A I don't know.

Q I noticed you were counting on your fingers.

Were you trying to determine some destruction period?

A Yes, I was. I honestly don't know whether it has been destroyed or not. I don't know whether it was ever taken from the records for any other purpose.

Q Did Hutton have a destruction policy in 1966?

A Yes.

Q How long did it keep records before they were destroyed?

A It varied, depending on what type of documents they were.

Q How about a document like this list of numbers?

A I don't remember what the policy was.

Q What was the minimum time which it kept documents for?

A The SEC has a requirement and that varies from document to document and I honestly don't remember exactly what the period of time was. Generally speaking we try to keep things for at least eight years.

Q At least eight years?

A Yes.

Q If that means that this record was prepared in 1966 even under your minimum destruction policy, it would be available in 1974, is that correct?

A Yes.

Q But you don't know where it is?

A No, -- well, W.E. Hutton is out of business.

Q When did they go out of business?

A Went into voluntary liquidation July 3, 1974.

Q Up to July 3, 1974, they were in business and presumably they still had this record?

MR. JULIEN: Just a minute. I think counsel knows a little better than that. Having had transcripts of the criminal trial he knows that somewhere these papers were exhibits in a criminal trial. I think he is asking the Court to indulge in some kind of speculation when he already knows that speculation will be unwarranted. Somebody had it, you have had it as an exhibit at that time.

MR. HART: Your Honor, the fact is that a photostatic document apparently was offered at the criminal trial in evidence. It was objected to on the grounds that it was not the original document which was identified as being somewhere in Hutton's warehouse.

As far as I know, the objection was never cured, as far as the transcript shows. I have never seen the photostatic document, nor have I seen the original.

MR. JULIEN: Nor have we. Nobody has had it since.

Q What other record was maintained by Hutton

to identify the certificate numbers of U.S.Treasury notes?

A There was no other record.

Q That was it then? That was the only record in existence which identified the certificate numbers of the notes that were in the vault in May of 1966?

A That's right.

Q Who called this shortage to your attention, do you recall?

A I don't recall, no, because I had been on vacation and come back from vacation.

Q When were you on vacation?

A August of 1966.

Q For the entire month?

A Most of it.

Q So thatyou returned from vacation and were informed that a loss had been discovered?

A Yes.

Q But you don't know when and you don't know the circumstances except that someone told you it was in connection with a routine audit, is that correct?

A Yes.

Q Had any investigation been begun by the time you returned from vacation?

A Yes. It was in progress.

Q Would you describe the nature of the investigation that was in progress when you returned?

A I already have.

Q Was this the attempt to locate the physical security?

A That's right.

Q How long did that investigation continue?

A Up until September 27, 1966.

Q I would take it, then, that the attempt to identify the missing certificate numbers went on at the same time as the attempt to locate the certificates?

A That's right.

Q When did the attempt to identify the missing certificate numbers begin?

A After -- I don't know the exact date. It would be after they had ascertained that it wasn't thrown out in the garbage or misfiled some place.

Q Was it while you were on vacation?

A I don't remember.

Q Who set up the procedure for this inquiry, this investigation?

A It is a normal procedure whenever any security of any type is missing.

Q I don't mean the search for the physical certificates, I mean the attempt to identify the missing certificate numbers.

A Oh, that took place after I came back from vacation.

Q Were there procedures to be followed? Was there a manual on how to do this?

A No, there is no manual. You have to,as I say, go back to the prior interest payment date to see what serial numbers we had on hand.

Q That is that list on May 15, 1966?

A That's right. And then you have to go each day from that point forward to determine what certificates were received or delivered out of the firm so you can account for any changes in the numbers that you have presently on hand.

Q That means someone had to sit down and go through the records of whatever sort that Hutton maintained showing every transaction on every day from May 15, 1966, until some time in September, I guess, is that correct?

A That's right, absolutely.

Q Who did this?

A A group of individuals in the cashier's department, the cashier and his assistants.

Q And they sat there for days turning pages and making entries?

A Yes. It is not quite as laborious as it sounds in this particular situation because the activity in U. S.Government obligations was very minimal. So you go to a stock record listing to see if there is any movement in the house and youcan do that quite rapidly.

Q Where are these records that they looked at, do you know?

A Where are they now?

Q Yes.

A No.

Q When was the last time you saw them?

A 1966.

Q Under Hutton's destruct policy they would still be around probably in 1974, is that correct?

A It is probable.

Q Do you know what safeguards were built into this system to avoid error?

MR.JULIEN: Did you hear the entire question?

A To avoid what --

THE COURT: What system are we talking about?

Q The system of turning the pages and looking for purchases and sales and treasury notes to compare with

the list that was made up on May 15, 1966.

A Would you rephrase that, please?

Q Well, if one of the clerks missed the transaction and W.E. Hutton sold treasury notes or otherwise properly disposed of treasury notes,but the clerk, in turning the pages missed that page, then those certificate numbers would show up on your list as mysteriously missing, isn't that correct?

MR. JULIEN: Objected to as hypothetical and speculative, if your Honor please. and not founded on anything in evidence.

THE COURT: He is laying a foundation for a question. I will let him do it.

A Yes.

Q Were there any safeguards built into whatever method was used for determining what was missing to avoid this type of error?

A No.

MR. HART: Your Honor, I would like to offer as Exhibit H a copy of a letter from the Bureau --

MR. JULIEN: A letter?

MR. HART: I am sorry.

MR. JULIEN: If your Honor please, I have no objection or I will have no objection if I first see the

letter of inquiry to which this is responding. Oh, I beg your pardon. No, I don't even make that point.

I don't object to paragraphs first and second of this letter. I object to the generalized information contained in the rest of the letter as stating some kind of opinions of the scrivener, which are in no way binding on any of the parties here, not subject to cross-examination, and certainly not the way opinion evidence can be given.

The first two relates to, if I may say, the first two paragraphs, relate to a missing $5000 coupon. That, I think,would be admissible and you should have that.

THE COURT: Let me see it. Your objection is overruled. Let Mr.Halpern see it to see whether he has an objection before I receive it.

MR. HALPERN: I have no objectionto this letter going in.

THE COURT: All right. It may be received.

xxx (Defendant Royal National BankExhibit H was received in evidence.)

MR. HART: I have to apologize to the Court, your Honor. This letter relates to a certificate number that I had in mind, but it was a different document relating

to that certificate number, and I picked up the wrong one. I apologize to the Court.

MR. JULIEN: I didn't get that.

THE COURT: Don't apologize to me. That is received in evidence.

MR. HART: Yes,sir, but I now have to get a different document relating to the certificate. It is a different letter or document from the Bureau of the Public Debt.

MR. JULIEN: May I have that read back?

(Record read.)

MR. HART: I have a copy with some underlinings on it. To save time maybe I can put this in and underline a few numbers and replace it with an original without the markings.

MR. JULIEN: Would this be an appropriate time to take a short recess, your Honor?

THE COURT: I hate to do it, but I will take it. You may step down. Don't discuss your testimony with anyone.

(Recess.)

MR. JULIEN: If your Honor please, before we proceed, your Honor will remember the colloquy

dealing with the exhibit used in the criminal proceedings, which neither one of us had seen, and we hadn't at the time.

We said so.

Curiously enough it has been produced here this very morning.

I understand it was photostated either in your chambers or elsewhere.

THE COURT: It was photostated in my chambers.

MR. JULIEN: Now it is here, and I think it ought to be marked for identification. I see it for the first time.

nd 3A

THE COURT: It was produced out of the District Attorney's Office.

MR. JULIEN: So when we said it, neither one had seen it.

THE COURT: By Mr. Julien.

MR. HART: I believe it's been precluded. That was one of the documents which I had requested and which Mr. Julien didn't produce by June 30th.

THE COURT: He didn't have it.

MR. JULIEN: I never had it.

THE COURT: He didn't have it. Take a look at it.

MR. JULIEN: May it be marked for identification at the present time?

THE COURT: Yes. They had only a photostate too.

(Plaintiff's Exhibit 47 was marked for identification.)

MR. HART: I will simply call to your Honor's attention that your Honor did rule that this document and others which I had requested would not be permitted to be offered in evidence at this trial because they were not supplied.

THE COURT: I agree with that and I still

adhere to that ruling with respect to production out of Hutton, but Hutton didn't have it. The original apparently was supplied to the District Attorney's Office and a single photostatic copy was made. The original apparently has been lost, and then on the trial they tried to offer this photostatic copy.

MR. HART: According to the testimony at the criminal trial, your Honor, as I recall it, the original was identified as being in a warehouse. There was a photostatic copy which was offered and objected to as not being the best evidence, and that's where the record stood. I don't believe that Hutton had delivered the original to the district attorney, according to the transcript.

MR. JULIEN: I don't know what his problem is, Judge. I just was clearing up a representation we both made to the court? That's all I wanted to do. We haven't reached the point of anybody offering it.

THE COURT: Nobody's offered it yet.

MR. HALPERN: I have no objection.

MR. HART: I offered in evidence Exhibit J for identification.

MR. JULIEN: If your Honor please, Exhibit J purports to be something passed between two sections

of the federal government in the year 1967, and it is purely hearsay. It isn't a record kept in the regular and ordinary course of business and it is far beyond the events that we are inquiring into. I don't see what its pertinency is here.

MR. HART: It was delivered to me, your Honor, by Mr. Julien's office, taken from the files of the plaintiff in this action, and was part of an exchange of correspondence which the plaintiff was having with the federal government regarding these very Treasury notes.

This is an internal document which was delivered to the plaintiff by the federal government in connection with their inquiries regarding these certificates.

MR. JULIEN: None of that satisfies the rules of evidence, if your Honor please, any more than the fact that I got a paper out of his hands the other day made it admissible in evidence. It is either admissible or not. That we gave it to him doesn't make it admissible.

THE COURT: I would like to see it. Mr. Halpern, do you have something to say?

MR. HALPERN: No, I just saw it. After

your Honor looks at it.

THE COURT: All right.

All right, Mr. Halpern.

MR. HALPERN: It deals with these very bonds here. It indicates the same bonds that were submitted by Mazzochi to the Royal Bank, which the Royal Bank sent to the Manufacturers Trust Company. Manufacturers Trust Company sent it through to the government. It deals with the same bonds we are talking about here.

MR. JULIEN: But that doesn't make it admissible as evidence. A year later, something not subject to examination?

THE COURT: I think this is one of the areas in which the court can exercise its discretion under the new rules. I'm exercising it. Admitted.

(Defendant Royal National Bank Exhibit J was received in evidence.)

BY MR. HART:

Q Mr. Rockafeller, please look at Exhibit J, and I call your attention particularly to the --

MR. JULIEN: Mr. Hart, I can hear the witness but I can't hear you.

Q Please look at the letter and I call your

attention particularly to the third paragraph thereof.

MR. JULIEN: The one starting 31606?

MR. HART: Right.

THE COURT: He's read it. Let's go on with the questions.

Q Does the third paragraph of Exhibit J relate to certificate No. 31606?

A Yes, it does.

Q Is that the same certificate as appears on the list which is part of Exhibit No.1?

A That's right.

Q Would you please tell us what that Exhibit J indicates with respect to certificate No. 31606?

MR. JULIEN: It speaks for itself. I object to it.

THE COURT: It speaks for itself.

Q Does paragraph 3 of that letter indicate to you that certificate No. 31606 should not have been on the list marked Exhibit 1?

A Yes.

Q Can you explain why it appeared on the list?

A Yes.

Q Would you please?

A It was onthe list because that was on the prior interest-payable-date listing which I explained before. Obviously, we put it in for breaking down into single-certificate denominations.

Q You are saying then that the people who checked the records failed to notice that transaction?

A Yes.

Q These underlying records that were used to check the purchases and sales, were they unusually large or bulky rec ords? What form did they take?

A We used the IBM listings which were bound in large volumes, plus daily receipt and delivery entries that had certificate numbers on them, and they were also bound in books.

MR. HART: Your Honor, I take it that the list which is part of Exhibit 1 was admitted as a record of a regularly conducted business activity and therefore an exception to the hearsay rule.

THE COURT: Yes.

MR. JULIEN: It's in evidence, is it not?

MR. HART: I would like to move it be stricken from evidence on the grounds that the witness' testimony has established that this document was not prepared in

the course of a regularly-conducted business activity which was the regular business practice, and it was the regular practice of that business activity to make such a list.

Furthermore, that in the absence of these records which were available when the action began and were available when a note of issue was filed and had been available all along, in the absence of those documents, that the circumstances surrounding the preparation of the list indicate a lack of trustworthiness.

THE COURT: Denied.

Mr. Hart, may I see that letter, Exhibit C? May I see that for one more moment?

All right.

BY MR. HART:

Q When this loss was discovered, Mr. Rockafeller, and you realized that you had missing certificates, were you aware of the fact that they were bearer certificates?

A Yes.

Q Were you aware of the fact that they could come into the illegal possession of another person?

A Yes.

Q But you made no prompt report to the police

or other authorities, did you?

A We didn't feel that they had been stolen initially, as I mentioned before, and we asked the advice of our insurance company, and I believe it was at that point we decided to report the matter. I don't know exactly when we reported the matter to the police.

Q I'm sorry.

A I don't know when we reported the matter to the police. We didn't want to jeopardize any type of investigation, and, as you pointed out in Jim Barbi's testimony, we were rather unsophisticated in this type of thing.

Q Were you aware of the existence of fliers regarding missing securities?

A Yes. I know what you mean.

Q What is a flier?

A Oh, a flier is simply a notice which is issued, usually by a clearing corporation, to banks and brokers indicating that there are lost securities.

Q What's the purpose of a flier?

A Well, the purpose is to hoefully -- hopefully somebody will find the lost securities. They very rarely serve any purpose.

Q What do you mean, someone will find the lost

securities?

A Well, a broker could have been delivered securities in error by another broker, for instance, and he might notice that, if he had looked at the flier and happened to look at the certificates at about the same time, he might tie the two together and say, "All right, Merrill Lynch, we have your lost securities."

Q Well, now, you know that bearer securities are passed by delivery just by handing it over?

A Certainly.

Q And that it bears no identification, no registration name other than the certificate number, correct?

A That's right.

Q Isn't it a purpose of a flier to make available to someone to whom a missing or stolen certificate might be offered some means of determining whether or not it's been reported missing or stolen?

MR. JULIEN: Before answering this question if your Honor please, since your Honor has not yet ruled and has reserved decision on the application made to belatedly insert three additional defenses, I want to be in a position of objecting on the ground that, first, it is not within the pleadings as of yet; and secondly,

that the negligence, if any, of the person whose property was converted has no application to the issues of this case.

THE COURT: So that you don't have to stand up and exhaust yourself again, you have a standing objection.

MR. JULIEN: Thank you.

THE COURT: Until I make the decision.

MR. JULIEN: Yes.

MR. HART: Would you read back the question, please.

(Question read.)

A Yes.

Q There are other means also of trying to determine whether a certificate has been reported missing or stolen, is that not correct?

A I don't understand that question. Would you rephrase it?

Q I will rephrase it.

You are experienced, and were in 1966 experienced, in the field of securities. What methods did you believe were available to you to make inquiry to determine whether or not a particular certificate had geen reported missing or stolen?

A In the type of security we are dealing with, there is very little you can do in the form of making inquiry. It is just as if you lost a dollar bill and for some unknown reason you had reported the serial number and you called up the Federal Reserve Bank and asked them to place a stop on that particular bill. These things are just as negotiable as currency and you cannot place any type of stop transfer, if you will, on them.

The Federal Reserve, in fact, which deals in them every day, makes no attempt to keep track of the serial numbers.

Q How about the FBI?

A Neither do they.

Q The police, the Secret Service?

A No one.

Q Is that why you didn't report this loss to the police, because it would have served no purpose?

A No. We didn't think they were stolen.

Q That was the reason?

A And we wanted our advice coming from our insurance company, who was much more experienced in these matters than we were.

Q To the best of your recollection, did you

follow their advice?

A Absolutely.

Q I would like to read something to you from the deposition taken of Mr. James Bills --

MR. HALPERN: May the record show that Jimmy Bills is now dead.

Q -- on September 9, 1969.

Do you know who Mr. Bills was?

A Yes.

Q Who was he?

A He was a representative of the United States Fidelity & Guaranty Company and he investigated this matter.

THE COURT: Mr. Hart, may I have a copy of the deposition?

MR. HART: Yes.

Your Honor, the deposition is not signed because Mr. Bills died before it could be signed. And in fact I believe that the original was forwarded to Mr. Komoroff and not returned to me. I sent it to him for Mr. Bills' signature but he did not sign it.

THE COURT: There's been no objection to your reading it so I assume it may be read.

MR. HART: I've marked up this copy

because it is the only one I have ever had, except I have a Xerox of some of the pages to which I refer now.

Q Page 69, line 4:

"Q Did you discuss anything else with Mr. Rockafeller?

"A I asked him to report it to the police immediately."

MR. JULIEN: Just a minute. Is there some point where the date, approximately, of this conversation is identified in some fashion?

MR. HART: I believe the witness testified, Mr. Bills testified, that is, that it was approximately October 3, 1966.

MR. JULIEN: Where is that? Because the only date I see preceding what you are about to read is October 18, 1966, at page 65. I don't know whether that refers to it or not. I see no other date.

MR. HART: That's the date of a memorandum.

(Pause.)

MR. HART: Page 54 he says it was some time before October 3rd when he received a communication from Hutton, and October 18th, when he wrote a report to which he was making reference.

MR. JULIEN: Your Honor, counsel has just referred to page 54 from line 13 to 17.

THE COURT: Yes.

MR. JULIEN: All right.

BY MR. HART:

Q "Q Did you discuss anything else with Mr. Rockafeller?"

I believe the record reflects I'm reading from page 69, line 4.

THE COURT: Right.

Q "Q Did you discuss anything else with Mr. Rockafeller?

"A I asked him to report it to the police immediately.

"Q What did he say with respect to that?

"A He said that they were reluctant to report it to the police because of the bad publicity.

"Q Was this the first discussion you had with anyone from W. E. Hutton about reporting this loss to

the police?

"A Yes."

MR. JULIEN: If your Honor please, I move to strike all of that because all of that is subsequent to all of the transactions which took place between Mazzochi and Merrill Lynch and Royal National.

THE COURT: This falls within the same ambit of the objection that you last made where I hoped to save your energy and time by saying you have a continuint objection.

MR. JULIEN: No, no, this is entirely different. Here I'm point out to your Honor that what is said about reporting it to the police between October 2nd and October 18th is almost a month subsequent to the last transaction when Mr. Mazzochi transacts and turns over these notes to Royal and Royal turns it over to Merrill Lynch. More than a month later.

MR. HART: Your Honor, just a few days --

THE COURT: I would not strike it.

Q Now I read from page 70 of the same examination of Mr. Bills, at line 10:

"Q Did Mr. Rockafeller say anything to you further about reporting this matter to the police?

"A He said that the partners had had a meeting and decided not to report the matter to the police of the bad publicity."

MR. JULIEN: I have the same objection with respect to that.

THE COURT: Same ruling.

Q Does that refresh your recollection, Mr. Rockafeller, as to why this matter was not reported to the police by W. E. Hutton?

MR. JULIEN: Excuse me. I think that question incorporates some misleading material, in that I believe the witness has testified ultimately it was reported.

Now, time element becomes important here. I'm going to object to it in that form.

THE COURT: I will sustain the objection as to form only.

MR. HART: I didn't hear everything that Mr. Julien said but I will rephrase the question anyway.

Q Do you recall the conversation to which Mr. Bills was referring, Mr. Rockafeller?

A No, I'm afraid I don't.

Q Do you recall telling him the substance of

what he said you told him?

A Yes, I think I do.

Q That the partners of W. E. Hutton felt the bad publicity would be harmful and therefore they would not report this loss?

A I think that was possibly their initial reaction at the time.

Q Well, I will read to you from Mr. Bills' same examination, at page 72, line 6 -- I'm sorry; line 5:

"Q What did you do after this meeting?

"A I met again on November 2nd at the offices of W. E. Hutton.

"Q Did you do anything between these two meetings?

"A No, other than write up my report and that's about all.

"Q With whom did you meet on November 2nd?

"A Jim Hutton, Jim Barbi, Tom Rockafeller and Bill Quinn.

"Q Were you the only representative of your company at that meeting?

"A That's right.

"Q Will you tell us, please, what you discussed

at that meeting?

"A We discussed the reporting of this situation to the police and the FBI.

"Q Will y ou tell us what you discussed, what they said and what you said?

"A They were still reluctant to report it because of the publicity. I pointed out a news article in the paper, I think it was in that morning's paper, where another brokerage house sustained a similar loss of $2 million stocks and bonds and that the news article emphasized that the loss was covered by insurance many times the value of the securities. I was finally able to convince them that the loss should be reported to the FBI and the police.

"Q They said they would report the loss?

"A Yes."

MR. JULIEN: With respect to that I move to strike upon the grounds that all of this is much later in point of time than the conversions which took place in this case.

THE COURT: Denied.

Q Do you recall that meeting, Mr. Rockafeller?

A No, but I'm going to have to take Jim Bills' word for it. That was recorded a long time ago. I'm

sure his memory was a lot better than mine at this point.

Q You accept the accuracy of what he said?

A Yes, yes.

Q I believe you said now that you did recall that Hutton was somewhat reluctant to report this loss because of bad publicity.

A Yes, I did.

Q You recall that. Was that because losses of this type, thefts of these types of securities, were rare in 1966?

A I think they were rather rare at that point. Things didn't get to be more active until '67 or '68.

Q In considering whether or not to make a prompt report, was one of the factors which you considered the possibility that some innocent third party might be presented with these notes and might try to find out if they were reported missing or stolen? Did you consider that?

A Well, you see, this was not my consideration at all on whether to report it or not. I don't want to back off the question, but that was my superiors. So I don't know what their thinking was.

Q You were at some of the meetings which they

had on this subject, weren't you?

A Just evidently the ones that Jim Bills mentioned. I don't recall either one of those meetings that he mentioned.

Q By the way, do you know whether Hutton filed a proof of loss with USF&G in connection with this loss?

A Yes, I believe we did.

MR. HART: Mr. Julien, do you have available a copy of that loss? There was never one furnished us by USF&G.

MR. JULIEN: Mr. Schlesinger says he hasn't seen it and I haven't.

A They paid us.

Q I'm aware of that, and I wanted to know if the formal document was filed and you said that you believe it was.

A I believe it was because that was normal routine.

Q Then you are assuming that it was?

A I'm assuming.

Q Have you ever seen it?

A I may have even filled it out. I don't remember.

MR. HART: Excuse me one moment, your

Honor.

THE COURT: Yes.

While we are waiting, Mr. Schlesinger, will you look in the papers that were furnished to you by the District Attorney's Office to see whether there is a proof of loss in there?

MR. SCHLESINGER: There wasn't, your Honor.

THE COURT: There wasn't?

MR. SCHLESINGER: No.

THE COURT: All right.

MR. JULIEN: For the information of counsel and the court, I am informed by Mr. Komoroff that Exhibit 1 and the list was considered the proof of claim in this case.

MR. HART: The only reason I inquired, your Honor, was at Mr. Bills' examination I asked for a copy and counsel objected and refused to let the witness answer my question, and then he died before we could get a ruling.

MR. JULIEN: I'm giving you the information. I am told, subject to any correction anybody can make, that Exhibit 1 and the list was accepted as proof of claim by the USF&G. Do we have to go into all this history?

MR. HART: I didn't want the court to think I had any point other than to find out.

THE COURT: Did you see that document before that he has now shown us?

MR. HART: They gave it to me. It is copies of memoranda from USF&G of Mr. Bills' reports.

MR. HALPERN: I have here a proof of loss. Would your Honor like to see that?

THE COURT: Yes.

Off the record.

(Discussion off the record.)

MR. JULIEN: Are you just offering the Bills report or the entire sheet?

MR. HART: All of it. I will say this, your Honor, since I don't intend to ask the witness any questions about any of this, perhaps I can make the offer and during the next recess you can look at it and then decide whether you have an objection and we can go on.

MR. JULIEN: I join in that.

THE COURT: All right. Let's get the questioning done.

Q Exhibit 2 is a broker's confirmation slip, is it not?

A That's right.

Q That reflects the purchase of United States Treasury notes, 5 per cent, 1970, the series that we are talking about in this action?

A That's right.

Q Is there anything on that confirmation slip which identifies certificate numbers?

A No.

Q Is there anything on it which identifies the number of certificates involved in the transaction?

A No.

Q Does it reflect anything more than a bulk sale of the face amount of the securities?

A This is a purchase confirmation.

Q Correct.

A Right. It just indicates that $215,000 face amount of U. S. Treasury notes were bought on this day for this particular amount of money.

Q Exhibit 1 indicates that the list was prepared on September 27th of 1966, is that correct?

A Yes.

Q That you spoke by telephone on that day with your insurance representative?

A That's right.

Q Do you know when the list was actually

compiled and when the information was actually available?

A I believe it was September 27th.

Q That was the very first day that that information was available to you in any form?

A To me personally, yes.

Q To whom would it have been available before you?

MR. JULIEN: I object unless it were. You talk about complete or parts of it? There's no proof it was available to anyone else before.

MR. HART: The witness said that September 27th he believed would be the first date that information was available to him

MR. JULIEN: I assume he is talking about it in composite.

THE COURT: Your assumptions and your objections are also suggestive and your objection is overruled.

You can answer the questionas to who may have been available prior to September 27th in whole or in part.

A All right. The person who transmitted the information to me was our assistant cashier, Jerry Pecora.

Q In what form did he transmit it to you?

A He called me on the telephone initially. I happened to be in our Cincinnati office. Coincidentally, that's where the insurance agent was. And I asked him to teletype the numbers to me so I can prepare the claim. I called the agent,as indicated by my notation, on the 27th and then had the covering letter typed up the next day.

Q Back in New York?

A No. This was done in our Cincinnati office.

MR. HART: Will the court take judicial notice that September 27, 1966 was a Tuesday? I have a calendar here. Just to try to refresh the witness' recollection as to the timing.

THE COURT: I will take judicial notice of it if there is no objection on anybody else's part.

Q Now, September 27, 1966 was a Tuesday. Do you remember when you went to Cincinnati?

A No, and I don't even remember why I was there, to tell you the truth.

Q Were you in New York, if you remember, the preceding day, that Monday?

A I don't remember.

Q Do you recall whether you received that telephone call early in the day on the 27th or not?

A I have no idea when I received the telephone call.

Q Do you know to whom else Mr. Pecora conveyed this information in addition to you?

A I have to presume it was Jim Barbi.

Q Do you know when he conveyed that information to Mr. Barbi?

A No, I don't.

Q From whom would Mr. Pecora have gotten the information?

A He was one of the individuals actively doing the research.

Q Do you know where he is?

A Yes.

Q Where?

A 14 Wall Street.

Q Is he still in the --

A He's in the liquidation of Hutton.

Q He is still involved with Hutton?

A Yes.

Q Mr. Pecora was the assistant cashier, Mr. Galli was the cashier, is that correct?

A Galli, yes.

Q Would the material have passed through Mr. Galli's hands through Mr. Pecora as the chain of organization was structured?

A It may or may not have. It was a rather informal --

Q But you got it directly from Mr. Pecora?

A I did, yes.

Q By telephone on the 27th, followed by a teletype, which was also received on the 27th, is that correct?

A Yes.

Q Was the list which is Exhibit 1 typed in Cincinnati?

A Yes.

Q Was the information on that list taken from the information that came over the teletype?

A Yes, it was.

Q Who did the transcription, do you know? I mean, was it under your supervision or was it just somebody in the office?

A Oh, yes, it was under my supervision.

MR. HART: I have no further questions.

THE COURT: You may have forgotten that

Mr. Rockafeller is also here as an expert, and if you want to ask questions with respect to his report, now is the time.

MR. HART: Oh, I thought we were going to do the facts first and then the opinion second. Okay.

THE COURT: I prohibited Mr. Julien from asking any of these questions which are covered by the report. So you must now ask or forever be foreclosed.

BY MR. HART:

Q Mr. Rockafeller, the opinion which you set forth in your statement dated August 7, 1975, which is Exhibit 46 relates only to stock brokerage houses and not to banks, is that correct?

A I am not speaking on behalf of a bank, no.

Q You are only intending to state your opinion as to what obligations and requirements there are which apply to stock brokerage houses?

A That's right.

Q And not banks?

A That's right.

MR. HART: I have no questions of this witness as an expert.

CROSS-EXAMINATION

BY MR. HALPERN:

Q Mr. Rockafeller,we have met before, haven't we?

A Yes, sir.

Q Not in this case?

A No.

Q Tell me, Mr. Rockafeller, how many transactions did you have involving stock brokers in the sale and purchase of negotiable securities,Government securities,prior to 1966?

A How many? I have no idea.

Q Well, they weren't many. Were they few or many?

A They were few.

Q A few?

A A few.

Q As a matter of fact, the major part of Hutton's work was in oil leases and commodities, isn't that right?

A No, sir. The major part of our business was in stock brokerage.

Q That would be registered securities?

A Bonds.

Q And bonds?

A We did a very large municipal bond business.

Q When you received -- not we. Let's come to you personally, what did you do? What particular part of Hutton did you manager or take care of?

A In 1966?

Q Yes.

A I assisted in the administration of the entire operations division.

Q Did you take care of the purchase and sale of Government securities in 1966?

A You are asking me whether I traded them?

Q You personally, yes.

A No.

Q In 1965?

A No.

Q Let me ask you this: Did you formulate any rules with Hutton for the trading of Government securities?

A Did I formulate any rules?

Q Yes.

A No.

Q Was that under your jurisdiction?

A I had -- no, I had nothing to do with the trading of bonds.

Q You told us before that a negotiable security such as these Government securities is equivalent to cash, isn't that right?

A Yes.

Q In other words, if I had a thousand dollar bill and brought it in it would be in the same category as bringing in a thousand dollar Government security of this type?

A You are speaking of negotiability?

Q Yes.

A Yes.

Q Isn't it a fact, Mr. Rockafeller, from your knowledge as an expeert, that the law merchant applies

where you could send these securities to India, Africa and all over, with the intention they be accepted on their face value?

A That's right.

Q Unless, of course, there is some notation on that particular certificate indicating something adverse to it such as it shouldn't be cashed or belonging to an estate or some indication there?

A All right, yes.

Q That would be an alert, would it not, to a stock broker?

A Oh, definitely.

Q And in the absence of such notation there is no alert, he takes it as cash, doesn't he?

A No. No, he doesn't.

Q What does he take?

A He has to verify the ownership of the security.

Q Well, let me ask you this: You,when I mean you, I am talking about Hutton, were brokers for many banks, weren't the"?

A Yes.

Q When you received a negotiable security of this type, did gu call up the bank?

A It depended upon what form it was received and

also from what institution.

MR.JULIEN: Just a minute, excuse me. Do we have a completed answer before this interruption?

THE COURT: Yes.

A It depends on the form in which it is received and the form -- and the institution involved.

Q All right.

A All right.

Q Let me ask you this: Do you know from whom these bonds were received by the bank?

MR. JULIEN: Your Honor, may we have a clarification as to whether he wants the witness to consider any of the documents.

MR. HALPERN: The man is an expert. I am asking him.

Q In arriving at a conclusion, which you did in your expert opinion,were you advised from whom these bonds were received?

A It depended on what type of transaction it was.

Q Well, I draw your attention --

THE COURT: I think he ought to have his opinion.

A I have to have something on which to give an opinion.

Q You must have --

THE COURT: He is questioning you on your first paragraph in your opinion.

A Okay. Fine.

Q I have been advised that in this case a brokerage firm received treasury notes; isn't that what you say?

A Yes.

Q Did you ascertain whether or not the brokerage firm in fact received treasury notes or only received a request from a bank for a quote and for sale? Did you ever check that?

A I have been advised the -- only on the actually the delivery of the securities, nothing to do with the trading.

Q Well, were you shown anything to indicate that there was delivery in fact of the particular security to Merrill Lynch?

A Yes. I saw delivery tickets.

Q Will you produce the delivery tickets to show actualy delivery?

A They are out here some place (handing.)

Q This is an order to deliver, isn't that right?

A Yes.

Q Did you see any slip indicating that Merrill

Lynch actually received these bonds?

A No, but --

Q That's it.

A -- they had them.

Q Counsel has just given me these delivery tickets. Look at the last one on this list. It says "Merrill Lynch, care of Manufacturers Hanover Trust Company." Isn't that what it says?

A Yes.

Q Did you look at that before you gave your opinion?

A Yes.

Q What does that mean?

A That simply means that they delivered the securities to the Manufacturers Hanover Trust Company for the account of Merrill Lynch, for the account of Frank Mazzochi.

Q I wouldn't care for whom they delivered, for whose account.

MR. JULIEN: Wait a minute. What he cares or doesn't care --

THE COURT: Let him ask the question.

MR. JULIEN: That is not even a question.

Q My question is, does that indicate delivery to Merrill Lynch of the specific bonds by the Royal Bank or

did they deliver them through an intermediary or deliver them to an intermediary?

A On this particular bill they are delivering them to Manufacturers Hanover Trust at 40 Wall Street.

Q That's right.

I show you Exhibit C and I ask you to look at it carefully as an expert --

MR.JULIEN: Is C in evidence, your Honor?

MR. HALPERN: C in evidence.

Q And I ask you to whom is that addressed?

A This is addressed to the Royal National Bank in New York.

Q What does Exhibit C in evidence indicate to whom delivery of all of these certificates ought to be delivered to?

A It says to deliver to the Manufacturers Trust Company.

Q Look at all of them there.

A All right. They are all the same.

Q Does that indicate to you an order from Merrill Lynch to the Royal Bank to deliver to the Manufacturers Trust Company and not to Merrill Lynch at its office?

A Absolutely.

Q Okay. Does that change your opinion, after

looking at these documents?

A No.

Q How do you justify this statement, "I have been advised that in this case a brokerage firm received treasury notes," in the fact of the documentary evidence which I just showed you?

A That is not what I was advised.

Q I asked you, does that change your opinion as to where these bonds went from looking at these documents?

A You only showed me one document.

Q I showed you four documents.

A But they didn't go to Manufacturers Hanover, they went to 70 Pine Street , Merrill Lynch.

Q I showed you four documents which consists of Exhibit C.

A Yes?

Q Looking at Exhibit C and look at the numbers of these particular bonds and compare them with any list that you may have, would that change your opinion as to where these bonds were actually and in fact delivered?

A No,I can't tell where they are delivered by this. This is just a confirmation.

Q From whom to whom?

A From Merrill Lynch to Royal National Bank.

dhb-10 Rockafeller-cross

Q And this confirmation states what, "please deliver"?

A But that doesn't in fact say that Royal National Bank followed those instructions.

Q So you don't know whether they were delivered or not? You can only tell us what counsel told you or somebody else told you?

MR. JULIEN: That is evidence in this case, your Honor, it isn't just what counsel told you. Santoro testified.

A I am sorry, repeat that?

Q I say, you can only testify as to what you were told, whether by counsel or anybody else, as to where they were delivered, isn't that right?

A Oh, sure.

Q Now let me ask you this: We have not heard any testimony up to the present moment with respect to the ownership of these certificates.

MR. JULIEN: Wait a minute. You are going to start with assumptions that aren't so.

MR. HALPERN: I withdraw the question.

Q Was H-utton the actual owner of these certificates?

A I have to answer that by saying we were either

BEST COPY AVAILABLE

the owner or the custodian.

Q I didn't ask you the two questions. I asked you whether Hutton owned the certificates in the name of Hutton.

A I don't know.

Q Well, did you ever replace these certificates for Hutton or for the actual owner of these certificates?

A I don't have the information available to answer that.

Q Let me see if I can help you.

THE COURT: Isn't it really immaterial and irrelevant in an action for conv-rsion? All I need to have is a right to possession, immediate possession. So why clutter the record with ownership.

MR. HALPERN: All right. I will eliminate the subject.

THE COURT: All right.

Q Now, you had charge of this investigation?

A Yes.

Q Were you ever requested by the United States Government or by the USF&G for the names or list of the garbage disposal people in the investigation of their disappearance?

A As I recall, they required the names of anybody

who might have had anything to do with these particular treasuries.

Q Excuse me, you are not answering my question.

MR.JULIEN: Just a minute. Can we do without these comments by counsel?

MR. HALPERN: Can we do without your comments?

MR. JULIEN: Can he restrict himself to questions, please.

Q You gave us a list of a lot of people who had entree to the vault, isn't that right?

A That's right.

Q They were many?

A That's right.

Q Now, I am asking you, have you a list anywheres of the peeople who did the disposal of the waste from that vault?

A No.

Q Weren't you requested by the United States Government and by the Surety Company and by others when demand was made for repayment of these bonds for a list of those people who had charge of the waste removal?

A Yes, I think we were.

Q Did you give them such a list?

A I really don't remember.

Q As a matter of fact, did you know?

A Who handled the garbage?

Q Yes. The waste removal in the vault, in the bank.

A The bankwould have known.

MR. JULIEN: The waste removal in the vault?

Q Yes, where these particular bonds were kept. That is exactly what I am asking.

A We could have found out. I don't know we did.

Q Did you ever?

A I personally don't know.

Q Did you ever check with any of the waste removal clerks who had specific charge of checking or shredding or whatever they had?

A Yes.

Q What was their answer?

A Well, they knew nothing about it.

Q Let me ask you this: You read off a list of bonds originally --

MR. HALPERN: May I have the list we started from?

THE WITNESS: I have Exhibit 1.

THE COURT: Exhibit 1, right.

Q Where did you get that list from?

A That was prepared by our cashier's department in New York after they had completed their research.

Q Did you have an employee by the name of Rudolph Galli?

A Yes, he was the cashier at the time.

Q Isn't it a fact that he had charge of this investigation?

A Under me.

Q Did he have charge of this investigation?

A Yes.

Q Did he have charge of the house audit at that time?

A Yes.

Q Did Mr. Galli prepare, at the request of the Surety Company, an affidavit indicating his connection with these?

A Yes, he did.

MR.HALPERN: May I have the original of that affidavit, please? I think it is Defendant Royal Exhibit 7 for identification, an examination of September 9,1969.

I offer this affidavit in evidence.

MR. JULIEN: No objection.

THE COURT: Mr. Hart?

MR. HART: May I have just a moment? Objection

to the extent offered for the substance of its contents. It is hearsay, really not a business record. To the extent it is being offered to prove the numbers, I object to it.

THE COURT: Where is Mr. Galli now?

THE WITNESS: He is a vice-president of Walting,Lerchen & Company. They are a brokerage firm here in New York. His office is here in New York.

THE COURT: And your purpose for offering this is what?

MR. HALPERN: Well, two purposes. One is to show that he prepared this affidavit with these numbers of the certificates as compared with Exhibit 1. Here it is, if you want to look at it.

THE COURT: I have a copy. I am going to receive it.

MR. HALPERN: Okay. Just let me mark it for identification.

THE COURT: Mark it for identification.

xxx (Defendant Merrill Lynch Exhibit L was marked for identification.)

(Recess.)

End 3B

MR. JULIEN: If your Honor please, before we continue, I think I am duty-bound to notify both the Court and my opponents that Mr. Galli, whom your Honor asked the whereabouts, I find is here under a subpoena by us.

In view of testimony already received I find what he is going to say to be cumulative, but I want both the Court and counsel to know he is available today. He tells me he intends to go on vacation, so if anybody wants to call him, we could withdraw this man now and put him on for any purpose desired.

MR. HALPERN: I certainly couldn't call him because I am not in the picture at the present time in this case.

MR. JULIEN: I would be perfectly willing if he wishes.

MR. HALPERN: I don't take witnesses out of turn.

THE COURT: All right. He never found that necessary.

Q Mr. Rockafeller, you told us, I believe, and if I don't quote it exactly verbatim, that there is very little you could do to make inquiry. These things are just as negotiable as currency, is that right?

A That's right.

Q You would adhere to that particular principle if you were the broker in this case, that is Hutton & Company?

A Can you rephrase that?

MR. HALPERN: Will you read it, please?

(Question read.)

A If you mean would I accept somebody coming in with --

Q Not somebody. If Royal Bank was your customer on your books andRoyal Bank entered into this transaction as you know it, from what you have been told, would you adhere to the principle that there is very little you could have done except accept it as negotiable paper?

A No.

Q What would you do?

A I would have to find out for whom the securities were being sold.

Q You would have been informed by the bank that they are being sold for a Frank Mazzochi, a customer of the bank. Would that have satisfied you? We don't want hindsight.

A No, I understand.

I previously said to you that it depended on

also what institution was selling it.

Q Now, pelase.

MR. JULIEN: What?

A What institution.

Q What?

A What institution. In other words, if it was the Chase Manhattan Bank, Government trading department trading with me, I would absolutely not question them.

Q Well, the Royal National Bank was a national bank, wasn't it?

A Yes, it was.

y It was well known, wasn't it?

A No, not to the brokerage community.

Q In other words, did you know of the existence of the Royal National Bank?

A I certainly did.

Q Did you also know, from whatyou were told, that Royal National Bank was a customer or an account of Merrill Lynch?

A I subsequently found that out, yes.

Q So therefore wouldn't you say of custom and usage, a customer of Merrill Lynch was the Royal National Bank?

A Not based on the documents that were shown to

me.

Q Is there anything that you know of which would indicate that Mazzochi was a customer of the bank?

A Well --

Q Pardon me, of Merrill Lynch.

A I understand what you mean.

The way those delivery tickets were made indicate that they were being sold for the account of Mazzochi.

Q By whom?

A It didn't say that.

Q Doesn't it say by whom they are being sold, that they are being sold by Royal National Bank and, as you say, for the account of Mazzochi? Isn't that what you read?

A That is what Royal National Bank delivery ticket says.

Q That is what it says.

A For the account of Mazzochi. But the Merrill Lynch confirmations say they are selling them for the Royal National Bank.

MR. HALPERN: May I have the confirmation?

Q They are sellingit for the Royal National Bank, isn't that right?

A That is what the confirmation says.

Q And they are selling it for their customer?

A That is not what the confirmationsays.

Q Would you assume Royal National Bank was the customer of Merrill Lynch?

A If I saw those confirmations, that is what I would have to assume.

Q Would you sell it for anyone if somebody came in off the street that you never knew or ever heard of as a broker, would you sell the bonds?

A No.

Q So you would have to look at the source where they came from?

A That's right.

Q Whatever your opinion is of Royal National Bank, it was a national bank, wasn't it? I am going back to 1966. It was chartered by the United States Government.

A So was Eaton Town National Bank.

Q Please.

MR. HALPERN: I ask that be stricken.

THE COURT: It may be stricken.

Q They were a national bank, weren't they?

A Yes.

Q They were existing and functioning in 1966, weren't they?

A Yes.

Q And they were recognized as a functioning banking institution, weren't they?

A Yes.

Q And they were dealing with the Federal Reserve and various other transmitting agencies or with the clearing house?

A I --

Q Whichever one I gave you.

A I presume so, yes.

Q Therefore, I ask you again, if you were Merrill Lyncb and this came from a banking house, let's say the Chase, as you said, would you send investigators out to investigate the Chase?

A No.

Q Would you send it out if it was Manufacturers Trust Company?

A Not if the trades came from their trading department.

Q How about anyother bank?

A No, not any other bank, no. I don't say that. I would investigate other banks.

Q And an investigation would have revealed that Mazzochi was a customer of the Royal Bank, isn't that right?

A Yes.

MR. JULIEN: Objection, if your Honor please. Mazzochi was never a customer of the bank. So that assumes a fact not in evidence.

MR. HALPERN: I said investigation would have revealed that.

MR. JULIEN: I object to that. That is not what it would have revealed.

MR. HART: Other witnesses did identify him as a customer of the bank.

THE COURT: I am going to overrule the objection.

Q Again, you yourself know that inquiry at the police department would have revealed nothing, is that right?

A That's right.

Q Inquiry at the FBI would have revealed nothing?

A That's right.

Q Inquiry at the Treasury Department would have revealed nothing?

A Right.

Q Inquiry at any other Government agency would have revealed nothing?

MR. JULIEN: Your Honor, there is no evidence that any such inquiry was ever made.

MR. HALPERN: This man is an expert and I am

questioning him.

THE COURT: He is an expert. You may answer the questions.

Q You knew, did you not, from your information that these were unmatured bonds, in other words, the maturity date hadn't expired yet on these bonds, isn't that right?

A That's right.

Q After maturity, you would have taken steps to determine their source, wouldn't you, after maturity?

MR. JULIEN: I object to that, if your Honor please, as indicating that the witness has testified anything else with respect to prior to maturity, he indicated he would have taken steps. So this question assumes again a state of facts not in evidence.

MR. HALPERN: All right. I withdraw the question.

Q Is there a difference in the condition of the bond prior to maturity and after maturity? I am talking about these Government bonds.

A No.

Q In other words, you, as an expert, say that the same value with respect to a bond before maturity should be applied to a bond after maturity?

A Well, it can certainly be redeemed for its

face value.

Q I asked if a customer could come in to you --

A No.

Q What?

A No. I would take the same precautions.

Q After maturity?

A Certainly.

Q Isn't it a fact that there is a different degree of precaution rather than before maturity?

A No.

Q Is there a difference in the precaution?

A No.

Q You say there is no difference?

A Not as far as I am concerned.

Q Don't you know, Mr.Expert, that before maturity a note passes from hand to hand regardless; even from a thief it has full value and has due process -- and has value to be transferred?

MR. JULIEN: I object to that question, as to its form.

Q Don't you know that as an expert?

THE COURT: I am going to let him answer it.

THE WITNESS: Repeat that again.

(Question read.)

A Yes.

Q Don't you also know that after maturity those same conditions don't apply in that there are certain inhibitions after maturity?

A That is not my point for the same -- requiring the same precaution. You still have an obligation to know whether or not you are dealing with the rightful owner of the securities.

Q Please. I asked you after maturity.

A I don't care.

Q Oh, you don't care.

A No.

Q Well, from your knowledge as an expert, is there a different type of investigation, as you call it, after maturity than there is before maturity?

A Speaking for the brokerage industry, no.

Q Didn't you say something about that you would inquire as to ownership of the bond?

A I am sorry?

Q Did you say you would inquir as to ownership of the bonds?

A We would demand proof of ownership, yes.

Q As a matter of fact, did Hutton & Company know who owned the bonds?

A These specific bonds?

Q Yes, these specific bonds.

A Yes.

Q Isn't it a fact that there was over $400,000 in bonds missing and these specific bonds were gotten up out of the 400?

A I don't know.

Q Is there anything in your file to indicate these specific owners? Can you tell us who they were for these specific bonds?

A I have nothing in hand now.

Q Did you know? Give me one name. You are dealing here with $215,000. I am asking you, as the head of that department, who investigated this matter, to give this Court one name of one owner of any of these bonds.

A I think that is pointless.

Q What?

A I don't think there is any point to that.

Q Whether you think or not, I am asking you if you can tell me.

A Now at this point of time, of course not .

Q Did you know?

A Did I ever know?

Q Yes.

A I can find out whose accounts they were for, of course.

Q Did you know?

A It wasn't necessary.

Q Now I am asking you now, in your investigation, and you said you were in charge of it, can you give this Court the name of one owner of even a $5000 bond?

MR. JULIEN: Already been asked and answered.

A Let me ask you something.

Q Don't. I am here to ask you.

THE COURT: It has been asked and answered.

A I want to know if this is in answer to the question.

Q Do you know or did you know?

MR. JULIEN: I don't think counsel is aware your Honor has ruled against him on this.

THE COURT: It has been asked and answered.

MR. HALPERN: As a matter of law, Judge. He is supposed to be an expert and he conducted this investigation.

THE COURT: He has already said he doesn't know. He can't give you a single name.

MR. HALPERN: I have no further questions.

THE COURT: All right. That doesn't mean you

are through yet.

THE WITNESS: I want to expand on that.

THE COURT: No, don't expand. Don't volunteer anything. We could be here for six months if you volunteer.

MR. HALPERN: May I ask?

BY MR. HALPERN:

Q By the way, as an expert in negotiable instruments, did you ever read any of the sections with respect to the Uniform Commercial Code pertaining to negotiables?

A I didn't represent myself to be an expert in negotiable instruments.

Q You didn't. You represented yourself as being an expert in all phases of brokerage.

A Brokerage operations.

Q As a matter of fact, most of your brokerage operations dealt with commodities, didn't they?

A No, sir.

Q Let me see if they did. You were there to develop and direct activities of commodity futures, including cocoa, coffee, sugar, metal, wheat, corn, lumber and any other numbers that are contained in this exhibit, isn't that right?

MR. JULIEN: He is now reading for a period from '69 to '72.

A I did that, too.

Q Prior to that, from '64 to '69, you were responsible for branch office liaison with 40 branches in Asia, Europe and South America?

A That's right.

Q Can you tell us what the custom and usage was with respect to New York City at that time?

A Oh, yes, I was right in New York City and I was also still responsible for the various departments which I indicated earlier.

Q YOu had cashiers, credit, control, dividend, purchasing personnel, order room and sales departments, isn't that right?

A No, it says purchase and sales, I believe, which refers to what we call in the business the P & S Department, and it has to do with taxes.

Q Read it yourself. See if I misread it.

A I am afraid it is a typographical error.

Q I didn't mislead you?

A No. As I said earlier, I had nothing to do with the sales organization.

Q You are not a member of the Stock Exchange, are you?

A No, sir.

Q You don't hold a seat there?

A No.

Q And you said "Allied membership, New York Stock Exchange," does that mean you are there by reason of the fact you are associated with it?

A Right.

Q And the partnership might be a member, is that right?

A That's right.

Q But you don't hold a seat yourself?

A No.

MR. HALPERN: Thank you.

MR. JULIEN: With respect to 47 for identification, your Honor, counsel, I am sure, will agree that this is the document which was referred to in the trial, the criminal trial, of this matter as the notes by the witness Prince,who testified and delivered these notes at that time to the District Attorney.

I respectfully offer 47 marked for identification in evidence.

THE COURT: Let me see it.

Mr. Hart?

MR. HART: I object, your Honor. First I would like to represent to the Court that in the earlier years of

this case I made an effort to obtain --

THE COURT: I don't want history. You have already put that on the record. The history.

MR.HART: Not that I tried to get it from the DA also and was never able to. I have never seen it before. I can't stipulate this is the document that was received in evidence.

THE COURT: I would like you to ask Mr. Rockafeller whether he ever saw this document before. I will ask him. I will make him the Court's witness.

THE WITNESS: I believe I have seen this, yes.

BY THE COURT:

Q Do you recollect the circumstances under which you would have seen it?

A I believe it was back at the time we were carrying out this investigation to try to ascertain what certificates were lost.

Q Do you recollect who might have shown it to you?

A No, I can't say who showed it to me. It would have been one of the people in the cashier's department who were doing the investigation.

THE COURT: You can put your objection on the record. You can put your objection on the record if you have an objection.

MR. HART: I object, your Honor, and I respectfully remind your Honor of your prior ruling that this document won't be permitted to be offered in evidence.

THE COURT: Not that document. Something produced out of Hutton's files which they failed to produce.

MR. HALPERN: I have no objection.

THE COURT: In this connection, I am exercising my discretion and putting that in evidence.

MR. HART: May I ask the witness a question about the document?

THE COURT: You are a little late in the game. I have to prod you to do the job you are supposed to be doing. Ask him.

VOIR DIRE EXAMINATION

BY MR. HART:

Q Do you know where the original of this document is?

A I have no idea.

Q Is there an original?

A That was a handwritten memorandum.

Q The document you are looking at is a photostatic copy, is it not?

A Sure.

Q Was the original in Hutton's file?

A I don't know. That is not one of our -- that is just a memorandum.

Q Is this not or does hit not appear to be a copy of part of the computer sheet which you described earlier?

A No. No. This is just -- someone has used this to make notatioons on of certificate -- serial numbers.

Q Do you remember any of these numbers?

MR. JULIEN: I object. I think we have gone beyond any questions of voir dire. He made the point that this was missing. He was badgering us that he couldn't produce it. I went to the same source that he said he went to and subpoenaed them and it came down this morning.

Now, what more do we need?

THE COURT: Yesterday afternoon.

MR. JULIEN: Did it come yesterday afternoon? He just brought it in to us this morning, your Honor.

THE COURT: It was photostated out of my office.

MR. JULIEN: Then the Court had it even before we did.

MR. HALPERN: On the statement made by the witness, that it is just scribbling, he doesn't know what it is, there is no testimony it comes from the regular books and records of Hutton, I objec at this time.

Anybody could make up a photostat.

dhb- 19 Rockafeller-

THE WITNESS: That in fact is not -- as I say, it is just somebody's meorandum notations.

MR. HART: I object to it on the grounds of competency.

MR. HALPERN: There is another thing.

There is a telephone number on that.

MR. JULIEN: I won't offer the telephone number.

THE COURT: The telephone number is not being offered.

I will receive it into evidence.

xxx (Plaintiff's Exhibit 47 was received in evidence.)

d 4A

BY MR. JULIEN:

Q In arriving at the opinion which you have expressed to the court in this case, had you looked at the documents which are contained in Exhibit 8, the delivery documents, from Royal National for the account of Frank Mazzochi to Merrill Lynch?

A Yes, I have.

Q As a result of the legend appearing on these documents, each and every one of them, that these notes are for the account of Frank Mazzochi, Jr., what, if anything, were the precautions that as a matter of practice should have been exerted in '66 with respect to that?

MR. HALPERN: Objected to.

THE COURT: Sustained.

MR. JULIEN: You said about rebuttal, didn't you.

THE COURT: It's in the report. This report is in evidence. You don't have to rehabilitate him.

MR. JULIEN: If you say I don't have to rehabilitate him, I won't.

THE COURT: It's in the report.

MR. JULIEN: I will take your Honor's statement on that.

THE COURT: Nobody broke down that report, as far as I can see.

MR. JULIEN: Right.

Q You told us before that one of the reasons for the delay in notifying any authorities concerning these missing documentw was, first, that you wanted to complete your search, and second, something about jeopardizing investigations. Did you say that?

A Yes.

Q What did you mean by that?

A Well, if you get a lot of publicity about something that has been stolen, why you are liable to let the individual who has stolen it run for cover.

Q But at any rate --

MR. HART: May I have that answer read back.

MR. JULIEN: Run for cover.

MR. HART: Run for cover?

MR. JULIEN: Run for cover.

Q At any rate, as of this last date of any transaction, which is September 12th of 1966, as of that date had anybody suggested to you, in words or substance, that the report be made to any authority?

MR. HART: Objection, your Honor. The record establishes that the transaction continued well beyond September 12th because the bank held the money in suspense until September 29th and that was still part of the same direction.

MR. JULIEN: By that time you were in a debtor and creditor transaction.

Q Up to the time of the dates of conversion, September 12th of 1966, had you even finished your seatch with respect to it?

A No.

Q All right.

A We still assumed they were lost.

Q As of that date, was there still an ongoing investigation which culminated on September 26th or 27th?

A Yes.

Q Was it at or about September 26th or 27th that you came up with a list of the numbers involved in these securities?

A Yes.

Q You told me when originally I interrogated you here that on previous occasions there had been some instance where securities which seemed to be missing

had been discovered in your own office?

A That's right.

Q I mean --

A They might fall behind a filing cabinet, things of that nature.

Q Things like that have happened at Hutton?

A You've been asked about certain conversations with Mr. Bills, and then that you have said if he said it I will stand by it?

A Remember.

Q But do you, as you stiting there under oath, have any recollection of these conversations?

A I really don't.

MR. HALPERN: Objected to. That's all been gone over.

THE COURT: I will let him answer that question.

A No, I don't.

Q According to the part that was read, this conversation or conversations took place some time in the beginning to the middle of October. Shortly thereafter was notification given to the government authorities?

A I don't know the date of the notification.

Q Was it months, years or weeks?

A No, it would have been weeks after that. No, it probably would have been the same day after that quotation that we had earlier.

THE COURT: November 2nd. That's in the book, that's in the testimony.

Q Your attention has been drawn in Defendant's Exhibit J to a paragraph which reads, your Honor, "31606 for 5000" --

THE COURT: It's in evidence.

MR. JULIEN: I just want to refer to it so he will know what I'm talking about.

THE COURT: He knows what you are talking about. 31606.

Q That's the 5000 that was received from Hutton by the Federal Reserve Bank?

A Right.

Q I want to show you Exhibit 48 for identification.

Before doing that, let me offer in evidence 48 for identification, referring to the same number.

MR. HART: I object on the grounds of materiality, your Honor.

THE COURT: Let me see it.

MR. JULIEN: This is an interchange precisely the same as the one you received a few moments ago, from one office to another. I offer it only for thepurpose of showing why there may have been a discrepancy as to that single number, that their numbers have been changed.

THE COURT: Put it in evidence.

(Plaintiff's Exhibit 48 was received in evidence.)

Q When you talked to Mr. Halpern on negotiability of these bearer notes, are you using that term in the same sense as what should be done with respect to accepting such bearer notes in quantity as occurred in this case?

MR. HALPERN: I'm objecting to the question and also as to the tipoff quality of it.

THE COURT: Yes, sustained.

Q What do you mean by negotiability?

MR. HALPERN: Objected to.

THE COURT: Sustained.

Q Do your answers with respect to negotiability in any respect change the opinion which you gave as to what should be done when one receives notes in such large quantity named for the account of a person?

A No.

MR. HART: Objection, your Honor.

THE COURT: I will let him answer that question.

MR. HALPERN: May I have an objection for the record?

THE COURT: All right. You have an objection for the record.

Q What was it that you meant when you said negotiable as currency?

MR. HALPERN: Objected to.

Q What were you indicating there?

THE COURT: I will sustain the objection. Hopefully Mr. Julien will get the idea ultimately.

Q You were asked what you knew about Royal National Bank. What did you know about them?

MR. HALPERN: Objected to as immaterial.

MR. JULIEN: The question was asked. The door has been opened.

MR. HALPERN: There was a different reason for asking.

MR. JULIEN: Of course, and you want to keep out the evidence.

MR. HALPERIN: I object to those remarks.

THE COURT: Yes, I will sustain the objection.

Q In brokerage and banking circles, was Royal National Bank traded on a par with Chase?

MR. HALPERN: Objected to.

THE COURT: I sustain the objection on the ground that the witness has already indicated the answer.

Q On these documents, Plaintiff's Exhibit 8, based upon your experience and the practice in the trade, who would be considered the source of the negotiable documents which are being presented by Royal National to Merrill Lynch?

MR. HALPERN: Objected to. It's all been gone over, question and answer.

THE COURT: I will sustain the objection.

MR. JULIEN: I think this ties it up and I can leave the subject.

THE COURT: I wish you would leave the subject myself.

Q Mr. Rockafeller, you just got a passport to leave.

THE COURT: Unless someone else has some questions.

MR. JULIEN: If someone else asks, then I've got a few.

MR. HART: I have a few, your Honor.

THE COURT: With respect to what he has on his redirect?

MR. HART: With respect to material that was brought out during Mr. Halpern's cross.

THE COURT: All right, Mr. Halpern's cross.

MR. JULIEN: In that case, I 'm going to ask a few more questions.

THE COURT: All right. Go ahead.

MR. JULIEN: Passport withdrawn.

BY MR. JULIEN:

Q On the basis of those documents, Plaintiff's Exhibit 8, for whose account were these bills being entered?

MR. HALPERN: That was asked and your Honor sustained the objection.

THE COURT: Yes, I sustained the objection to that question.

MR. JULIEN: All right.

RECROSS EXAMINATION

BY MR. HART:

Q I believe earlier, Mr. Rockafeller --

MR. JULIEN: Can I get that "all right" out? That doesn't mean acquiescence in the court's ruling.

THE COURT: I wish you would once in a while.

MR.JULIEN: Once in a while I intend to.

Q In referring to Exhibit C, which are the confirmation slips from Merrill Lynch, I believe you said something to the effect that Merrill Lynch was selling them for Royal National Bank or selling them for someone. Now, I ask you if that is what that brokerage slip represents.

MR. JULIEN: Is that a brokerage slip for a confirmation?

THE WITNESS: That is a confirmation which indicates that Merrill Lynch purchased as principal, in other words, for their account, these Treasury notes from the Royal National Bank.

Q With respect to each of those slips, then, is it true that Merrill Lynch was not selling them for Royal National Bank or for anyone else but was in fact purchasing them as a principal? Is that correct?

A That's right.

Q When I asked you before whether your expert testimony related to brokerage houses or to banks, and you said only to brokerage houses, may I assume that you were referring only to the area of the nature of the investigation which was required and not to your testimony regarding the nature of the securities in question.

MR. JULIEN: I object to that question. His testimony is something that is for the court to evaluate, and counsel's assumption or personal evaluation I don't think can matter.

THE COURT: The witness has already testified that he is not an expert in negotiable instruments. I think that may be helpful to you.

MR. HART: He did give testimony, your Honor, regarding the nature of these types of securities and how they are handled in the investment community. And with respect to that --

THE COURT: He's doing that as a broker. And he made that very clear.

MR. HART: Okay.

Q You said that there was a reluctance to report this loss to the authorities because the people involved

might run for cover; is that what you said?

A Yes. I was speaking about the thieves. Naturally, if there is publicity they are going to lie low. They are not going to come out and get caught.

Q You mean that in order that the thieves should feel free to go out and hand this paper to someone else, you thought that it would be proper not to report the loss; is that your testimony?

A I think this is one of the questions we had, getting back to the discussions with the United States Fidelity & Guaranty, it was one of the concerns we would have of telling the police right away, having it get into the newspapers, and therefore if in fact the securities were stolen, we would have less chance of recovering it. And we wanted the insurance company's feelings on that because they are the ones that had to pay us.

Q What about innocent third parties to whom these securities might be presented who might want to make inquiry to find out if these papers, which would be regular on their face, would they not --

MR.JULIEN: That's objected to, your Honor.

THE COURT: What's objected to?

MR. JULIEN: This question is objected to. We have covered this material.

MR. HART: I withdraw the question and will begin again, your Honor.

Q These securities that were reported missing by Hutton were on their face regular, is that correct?

A That's correct.

Q If an innocent third party was presented these securities for handling in any fashion and they wanted to find out whether these securities had been reported missing or stolen, and you didn't report them missing or stolen, would there have been any way that they could have found out?

MR. JULIEN: I object to this question. First, insofar as innocent third parties are concerned requires some kind of investigation; and second, they never did any of this. They never made any inquiry of any kind. They are seeking solace from something that never even occurred in this case.

THE COURT: That doesn't prohibit him from asking the question.

MR. HART: And it is contrary to the evidence, your Honor.

THE COURT: I will let him answer.

MR. JULIEN: He didn't do a thing. They admit it.

THE COURT: I will let him answer.

A Well, I will have to say that our concern was getting --

THE COURT: I don't know that you have answered the question. He said is there any place --

A I'm sorry. I was thinking of something else.

THE COURT: You were thinking of the question before that.

Was there any place they could look?

THE WITNESS: No.

Q You talked about proof of ownership. What proof of ownership is required with respect to Treasury notes?

MR. HALPERN: I asked that question. It was objected to and sustained.

THE COURT: I'm objecting to it right now and sustaining it because we are not concerned with that. We are concerned with possession, and when he has that bearer security in hand, he has a right to possession, believe me, as of then. It's good even

in a finder's hands, except as to the owner.

MR. HART: No further questions, your Honor.

RECROSS EXAMINATION

BY MR. HALPERN:

Q Mr. Julien asked you some questions with respect to Exhibit C.

MR. JULIEN: I didn't ask any questions about that at all.

Q Then Mr. Hart asked some questions.

What is this document?

A It's a confirmation.

Q What is a confirmation?

MR. JULIEN: Haven't we had all of this? He did it the first time around. I object to his repeating it now.

THE COURT: Let him answer what a confirmation is.

Q That's right.

A That's a written notice to their customer thatthey have carried out their wishes.

Q And the confirmation contains the agreement between the customer and the broker, is that right?

A Yes.

A Yes.

MR. JULIEN: I object to that.

MR. HALPERN: That's all I want to ask.

THE COURT: All right. That is it.

MR. JULIEN: I have a question with respect to what Mr. Hart said.

REDIRECT EXAMINATION

BY MR. JULIEN:

Q Is the easiest way to check the right to possession of a person who brings a large amount of bearer notes, Treasury notes, to find out by what right he has possession of it?

MR. HALPERN: Objection. There's no scale here as to large amounts.

MR. JULIEN: This has to do with his opinion, your Honor.

THE COURT: Any amount.

MR. HALPERN: Any amount. That's what I'm objecting to.

THE COURT: I will let him answer.

Q Is the easiest way to check the right to possession of Treasury notes, Treasury bills such as these, to ask the person presenting them whether he owns it or by what right he has them?

MR. HALPERN: Objected to. He had possession.

MR. JULIEN: What kind of an objection is that? The opinion is given in this report --

THE COURT: You are asking him as an expert witness?

MR. JULIEN: Yes.

A Is that the easiest way? Of course it's the easiest way, but that is not, I don't think, a complete way.

Q What is the complete way?

A You have got to ask -- he's got to show you how he came by these particular certificates.

Q And --

A How they came into his possession.

MR. JULIEN: That's all.

THE COURT: Have you ever in your life required one, single individual to show you how he came into possession of a Treasury bill?

THE WITNESS: Yes.

THE COURT: Who was the individual? When?

THE WITNESS: I don't recall his name, but he was subsequently arrested.

THE COURT: Before or after this case?

THE WITNESS: Oh, this one? Yes, it was common practice in the trade. I myself hadn't done it before.

THE COURT: When was it common practice? Do you remember what year?

THE WITNESS: No.

THE COURT: If I understand your testimony as a fact witness, what you have been telling us in effect is that Hutton kept no running inventory on what was in its vault.

THE WITNESS: Well, what you have to understand, it's like a --

THE COURT: No. Don't ask me to understand.

THE WITNESS: I don't know exactly what you mean by running inventory.

THE COURT: If I have five Treasury bills and I sell one today, it's marked off the inventory.

THE WITNESS: Yes.

THE COURT: I pick up three more, I've got seven.

Did you have that kind of an inventory in 1966?

THE WITNESS: Oh, yes, absolutely.

THE COURT: Then why was it necessary to go back to the interest date in order to ascertain what you had in or out?

THE WITNESS: Because we don't keep track of serial numbers or certificate numbers, just like a bank doesn't keep track of the serial numbers on their dollar bills. Do you see my point?

THE COURT: Not quite, no. The point is, you have certificates, they have got serial numbers?

THE WITNESS: Right.

THE COURT: It makes no difference who owns them?

THE WITNESS: That's right.

THE COURT: But you could keep a running inventory on those Treasury bills just as easy as anything else, couldn't you? They are all serialized.

THE WITNESS: No, but with the -- in the industry there's no attempt to keep track of either certificate numbers or serial numbers; it's just quantities.

THE COURT: You have just $400,000 worth of Treasury bills?

THE WITNESS: Yes.

THE COURT: As a resolt of your experience over the last few years, would you say that that was good practice?

THE WITNESS: Well, it's still the practice. However, most people have much tighter security now on government securities, yes.

THE COURT: All right.

Is he discharged?

MR. HART: I would love to ask him about that person he asked to show him proof of possession or right to possession of a Treasury note. I hate to open up a whole new area.

THE COURT: I'm not going to let you ask.

THE WITNESS: You can ask me later.

THE COURT: I opened the area and I'm not going to let you ask at this particular point. I thought those were at least two areas in which you might have asked before.

I want to ask you another questions. With respect to your testimony that it depended upon the bank who was referring the sale, wouldn't it be a truer statement of the practice in the trade that there was really no rule because it is observed in the breach? If it is Chase Bank, you accepted it. If it is Chemical

bank, you accepted it. Buy if it is Royal -- or I shouldn't mention the name -- Franklin --

THE WITNESS: That's right.

THE COURT: -- then you have a problem?

THE WITNESS: Well, we are all governed by that New York Stock Exchange Rule 405 which covers everything.

THE COURT: Exactly. Good. I know your testimony. But if Chase had sent you these bills for sale for the account of Frank Mazzochi, you wouldn't have inquired of them who is Frank Mazzochi, did he give you any proof of ownership or how he secured these?

THE WITNESS: From the Chase Manhattan Bank, no.

THE COURT: No. All right, gentlemen.

(Witness excused.)

THE COURT: We will be in recess until 2 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

(2:00 p.m.)

MR. JULIEN: If your Honor please, I offer in evidence Exhibits 14 and 16 for identification emanating from defendant Royal Bank.

MR. HART: No objection, your Honor.

MR. HALPERN: No objection.

MR.JULIEN: For the record, it is a letter dated September 21, 1966. That's 14 And 16 are the enclosures in that same letter.

(Plaintiff's Exhibits 14 and 16 were received in evidence.)

MR. JULIEN: If your Honor please, I will offer in evidence, under our arrangement, the testimony of the Royal National Bank, by Conrad Hoffman, taken on August 26th of 1970.

(Plaintiff's Exhibit 49 was received in evidence.)

MR. HART: Your Honor, before I forget, if I may have back the copy which I gave to the court of the deposition of Mr. Bills, I will replace it with another copy of Mr. Komoroff doesn't have the original. But that is the only complete copy which I had.

F R A N K W. S I X T, called as a witness by plaintiff, being first duly sworn, testified as follows:

MR. JULIEN: If your Honor please, under the same arrangement we had with Mr. Rockafeller, where the statement, pursuant to our arrangement, was considered to be part of his sworn testimony, we have done the same with Mr. Sixt. I have served my opponents before the luncheon recess so I now offer 50 for identification, his report, in evidence.

(Plaintiff's Exhibit 50 was received in evidence.)

xx THE COURT: Do you have a copy for me.

MR. JULIEN: Yes, I do, sir. You may retain that.

THE COURT: Why don't you retain this and give me your copy.

MR. JULIEN: Very good, sir.

THE COURT: All parties will hang on to their own exhibits until we get to that point.

MR. JULIEN: Just make a notation that is 50, your Honor.

THE COURT: Yes, it's on there.

Incidentally, before you start questioning,

Mr. Komoroff, if you can find the exact copy of Mr. Bills' testimony, deposition --

MR. KOMOROFF: I only have one and I turned it over to my friend two and a half years ago. I don't have it.

MR. JULIEN: We have searched for it. We have one possible other source, another attorney who was assisting, and I think he has already checked. No place to go.

THE COURT: All right. Go on with the questioning.

DIRECT EXAMINATION

BY MR. JULIEN:

Q Just a few questions, Mr. Sixt, something which has come up this morning.

In banking circles in 1966, did the Royal National Bank enjoy the same reputation as Chase Manhattan Bank?

MR. HALPERN: Objected to.

THE COURT: I will let him answer.

A No.

Q Did it enjoy the same reputation as Corn Exchange and Chemical?

MR. HALPERN: Same objection.

MR. HART: Objection.

THE COURT: Same ruling.

Q Where a transaction emanates from a branch rather than the main office of a bank involving Treasury notes, from a banking standpoint does that indicate anything with respect to whether the notes are being sold by the bank for its own account or for someone else's?

A Yes.

Q What does it indicate?

A It indicates it's being sold for someone else.

MR. JULIEN: All right, your Honor, the rest of it's in evidence.

THE COURT: I will ask him the one important question.

Mr. Sixt, the statement of your qualifications which is contained in this report, is that a fair statement of your qualifications?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

You may examine, Mr. Hart.

MR. JULIEN: Would you consider -- we didn't do it before, but do you want to do that with respect to the balance of the statement? I thought

it wouldn't be necessary.

THE COURT: The balance of the statement -- the whole statement is in evidence, but I think that one question ought to be asked.

MR. JULIEN: All right, sir.

THE COURT: Someone might want to attack his qualifications.

MR. JULIEN: They might want to attack his opinion too.

CROSS EXAMINATION

BY MR. HART:

Q In the statement of your qualifications, Mr. Sixt, you indicate that you have been in the banking business in one form or another from 1924 through 1971.

A That's right.

Q What have you been doing since 1971?

A Well, I was teaching junior officefs for the bank on basic credit branch lending. I do some finder's fee work for a factor. I place commercial mortgages and on occasion have given financial advice to some clients.

MR. JULIEN: Mr. Sixt, before his next question, would you oblige us, please, by keeping your voice up a bit more?

THE WITNESS: Yes, sure.

MR. JULIEN: Thank you.

Q Have you ever testified in court before?

A Yes, sir.

Q As an expert witness?

A No, sir.

Q In a matter involving yourself?

A No, in a matter involving a bank.

Q Is that one occasion or more than one?

A No, more than one.

Q What types of matters were those?

A On suspense items, bad loans. Loans that we have charged off.

Q What are suspense items?

A Suspense items are those which are at the moment not collectible and where we sue for repayment.

Q So you have testified ror the bank in connection with these attempts to recover on loans, is that correct?

A That's right.

Q You say in your opinion,at the beginning, that you have examined into the facts as laid out to you.

Who explained the facts to you on which you

base your opinion?

A Mr. Komoroff, Mr. Schlesinger and Mr. Karis --

MR. JULIEN: Jaris.

A Jaris.

MR. HART: Your Honor, since this procedure is somewhat new to me, is it appropriate under this procedure for me to ask the witness to lay out the facts as were laid out to him or must I ask the particular questions? I would prefer to do it the former way, if your Honor has no objection.

THE COURT: You would prefer to do it what?

MR. HART: I would prefer to ask him to tell us what facts he was told.

THE COURT: I think that is appropriate. Certainly his whole opinion is based on those facts.

Q Mr. Sixt, will you please tell us the facts which were explained to you?

A All right. I'm trying to get them in logical order -- chronological order.

This young man, who was the treasurer or an official in a credit union and who had an association with small companies who were customers of the bank came in with $10,000 worth of Treasury notes and indicating

that they were not his and he would like to sell them or cash them in.

The bank did this, took the order, without having verified ownership, and subsequently, probably the same day, he came in with 60,000 more. He wanted cash but they said they would have to open an account in his name.

Thereafter, he came in with, I think in rapid succession, I don't know how many days apart, about -- for a total of 200-some-odd thousand dollars worth of Treasury notes, which were all credited to his account and withdrawals made almost immediately in cash.

I think there was a change in management at that particular bank and the latter manager suspected something and withheld the funds on the last transaction.

The young man, who had received the cash on the previous bonds by withdrawing from his account, contacted an attorney and an order was given to the bank, I don't know through what channels, that these funds were to be given to him.

MR. JULIEN: "Him," you don't mean the attorney?

THE WITNESS: No, no. The young man.

A Now, these were unusual cash transactions and I imagine that's what put the red flag up.

I'm trying to think. That's pretty much it.

THE COURT: Were you shown any documents that were issued by the bank at the time when you were given this rundown of facts?

THE WITNESS: I just saw a delivery ticket to the broker.

THE COURT: One, or were there several?

THE WITNESS: One.

THE COURT: One.

BY MR. HART:

Q Do you recall if this was the delivery slip that you were shown?

MR. HART: I'm showing the witness Exhibit 8.

A Yes. I didn't commit the numbers to memory but that was it, $10,000 U. S. Treasury note.

THE COURT: Let the record show that the witness was referring to the first page of Exhibit 8.

Q Were you told anything about the background that this person that you have described as a young man had with the bank prior to this transaction other than

what you said here?

A I was told he was around 26 years old, and I think that is pretty much it.

The bank had two or three accounts in which -- with little or no balance. As a matter of fact, one of them was marked "Don't pay against uncollected funds."

Q Did it sound to you as if this was somebody who pretty much walked in off the street and wanted to sell some notes and the bank didn't ask too many questions; is that the picture you have of this transaction?

A It isn't someone that walked off the street, obviously. But it was a small depositor with a lot of securities.

Q What picture did you have in coming to your opinion of the nature of the relationship between this individual and the bank?

A Prior to or at the time of the delivery of the securities?

Q At the time of the delivery of the securities.

A Well, when he delivered the first ten --

Q I don't mean what did he say and do at that time, I mean at the time he delivered the securities,

what had been the nature of his relationship with the bank up to that time?

A Small depositor.

Q About how long?

A A year or two. I'm not exactly sure.

Q Does a year or two strike you as a very short period of time in banking circles?

A It's a relatively short time compared with the overall accounts that we carry, banks.

Q You mean if somebody has been with a bank for a year or two you don't really feel you know who he is?

MR. JULIEN: I object to that. There's no testimony at all that this gentleman had been with the bank. The only testimony is about those accounts which the witness has mentioned.

THE COURT: I will let him answer the question.

A I'd have to preface my remark by saying that you would have to identify your customer with what checkings you did on him before he came to the bank. Because, in other words, antecedent information is very important if they have it.

Q In other words, the circumstances in which he

came to the bank would have a bearing on whether or not you would feel that you know him well enough to deal with him without doing a substantial investigation, is that correct?

A Would you repeat the question, please?

Q In considering whether or not you know him well enough to deal with him reasonably freely, would the manner in which he was introduced and came to be in a position where he had business with the bank, would that be a significant factor in your determination?

MR. JULIEN: I'm troubled by the words "reasonably freely" as being something that is very elastic.

MR. HART: We will be getting a lot more specific about it.

THE COURT: Overruled.

A It all depends on the transactions. If a fellow just has a debit and credit relationship, draws a check and receives money, you never make an in-depth investigation when you are making a loan. Coming in and saying hello, he's a customer. But the -- each transaction you weigh on its own.

Q In banking circles, in order to be considered a customer, do you have to be a depositor or could you

be a customer by being affiliated with a corporate depositor?

A You are not a customer unless you have an account.

Q A personal account in your own name?

A That's right. You are affiliated. Your corporation is the customer, you are affiliated with the corporation. Unless it's a proprietorship, of course.

Q If it is a partnership, then you are a customer?

A That's right.

Q This credit union that you were told about, were you told anything about the nature of the credit union and its background?

A Not too much, other than they made small loans to storeowners locally. And there wasn't much in the way of balance in the bank.

Q Were you told where the branch of the bank at which th i s transaction took place was located?

A In the Bronx, 149th.

Q Are you familiar with the area of 149th Street in the Bronx?

A Not now. I was years ago.

Q When?

A Oh, 25, 20 years ago.

Q That area is sometimes referred to as the hub, isn't it. Or was it then, when you knew it?

A I'm not sure. I'm not sure.

MR. JULIEN: I'l tell you what it is referred to.

Q Were you informed that the credit union had been in existence since about 1921 and had been a customer of this branch since 1951?

MR. JULIEN: I object to that, if your Honor please.

First, as to when it was in existence or the date it started, I don't know that that has been in the record. But secondly, it isn't the credit union that was passing these notes, it was an individual. So that how long the credit union had been in business doesn't affect it at all.

THE COURT: I will sustain the objection with respect to the first part of the question.

MR. JULIEN: That's 500 per cent.

THE COURT: Was he informed as to whether the fact that the credit union was a customer of the bank since 1952, I think the date was --

MR. HART: I'm sorry.

THE COURT: 1952, I think was the date.

BY MR. HART:

Q That was the date Mr. Santoro gave, to the best of his recollection. I think some bank records show it was '51 or '52.

A Frankly, I'm not sure that the length of time was given to me.

Q Were you told anything about the people who were affiliated with the credit union, what type of people they were?

A No.

Q Were you told that Mr. Mazzochi -- and that's the name of the individual involved -- was made an officer of the credit union about a year and a half before these various activities took place and was brought into the bank by members of the credit union and introduced to the bank officers?

MR. JULIEN: Could we have one at a time, please? May we have one at a time?

THE COURT: Yes, you may have one at a time.

Do you recall that he was made an officer of the credit union?

THE WITNESS: Yes.

THE COURT: Were you told he was brought into the bank by members of the credit union?

THE WITNESS: No.

THE COURT: And introduced?

THE WITNESS: No.

BY MR. HART:

Q Would the fact that he was brought in and introduced by members of the credit union have a bearing on your opinion as to how the bank should act in dealing with him?

MR. JULIEN: I don't recall any real hard evidence on that point, either, your Honor. I remember questions. I don't remember anybody saying that so and so brought him in and introduced him. To the contrary, I remember Mr. -- the last witness, Kayner, saying that he had no recollection about it at all.

MR. HART: The depositions of Mr. McGraw, who is deceased and Mr. Gullati in Florida will establish beyond any question that members of the credit union physically brought in Mazzochi in the bank and introduced him in 1965 as the new officer of the credit union, with the power to sign checks and make loans,and he filled out the cards at that time.

THE COURT: I will take it at this time subject to connection.

MR. JULIEN: You are going to offer it, are you?

MR. HART: Absolutely.

A I am a little confused now.

Q The question is --

THE COURT: Would that affect your judgment as to how you would deal with him?

THE WITNESS: As an individual?

THE COURT: As an individual, when he was borught-

when he came into the bank with these treasury bills.

THE WITNESS: It would have some bearing, but I would like to go back to what I said before. Each transaction is a separate opinion that I would have. Depending upon the transaction.

Q In forming your opinion, you consider everything you know about the person you are dealing with, correct?

A That is normal procedure for any change in officers. The other officers will bring him in.

Q When a bank is considering an individual, aren't references and introductions a very important part of the consideration?

MR. JULIEN: His question would seem to indicate that all this has taken place contemporaneously with the transaction. I don't think we can take it that way. I have no objection to a question of this type if it clarifies when they introduced him compared to when the transaction took place.

THE COURT: When they introduced him.

MR. HART: Is that addressed to me?

THE COURT: When they introduced him I think is proper.

MR. HART: I don't see what that adds because the bankers would be forming their opinion on a continuing

basis and whatever facts they had would continue to be absorbed.

MR. JULIEN: I submit there would be a different consideration perhaps if simultaneously with coming in of all these notes he is accompanied by three or four people at the same time. That might be a little different. That is not the fact here.

THE COURT: Mr. Julien, let the witness answer a question. I convinced in the last few minutes that he could protect himself. This is an expert and I am going to allow Mr. Hart great latitude.

MR. HART: Thank you, your Honor.

THE COURT: Ask again.

Q As a banker, in considering how you would deal with an individual, is a factor which you consider a question of whether or not he was introduced to the bank by someone in whom the bank has considerable confidence?

MR. JULIEN: That I can't allow, your Honor. I know you want me not to make these objections.

THE COURT: I am going to overrule your objection.

MR. JULIEN: The last part, this is something new that appears nowhere in depositions or in this trial. There is no indication that the bank has indicated any

confidence in anybody.

THE COURT: He is asking for an assumption as an expert. He can ask him any assumption he wants to, so long as it is related in some way.

MR. HART: Your Honor, I really don't mean to argue any factual points, but the depositions will make clear that the individuals at the credit union were very well respected citizens in the community.

THE COURT: Mr. Hart, you have to learn somewhere along the line that when you have one, you keep quiet.

If any of these people that were introduced were people who were, say, considerably good customers of the bank, would that be an element thatyou would take into consideration when he made this application for the sale of treasury bills?

THE WITNESS: Yes, but it depends on the amount. Again, I said each individual transaction has to be -- stand on its own.

THE COURT: That is -- you are talking about, in other words, cumulatively, if it got to be a fairly sizable amount, then you would make further inquiry as you went along?

THE WITNESS: Absolutely.

Q But you weren't told in the statement of

your facts that he was introduced by members of the credit union to the bank, is that correct?

A I assumed it. That is the usual procedure.

Q You did?

A When a credit union or any union, when new officers come in, it is incumbent upon the old officers to bring him in. He doesn't come in cold turkey. Someone brings him in.

Q Then is it normal practice for him to continue to do business on a recurrent basis with the branch, be in the bank frequently, be known to the officers?

A I would assume so, yes.

Q I ask youto accept that Mr. Mazzochi for about a year and a half prior to these transactions and following these introductions by the members of the credit union, did come into the bank on a frequent basis, engaged in his own small accounts, and also engaged on behalf of the mutual credit union. I ask you to accept that he became known to the officers on a first name basis in connection with his banking operations, no personal involvement, but for a year and a half he was in there doing business in those various capacities.

Now, when he came in with --

MR. JULIEN: Is that a question, because I am

going to object to that assumption. I say it is unsupported in the evidence in this case.

THE COURT: Are you referring me to the deposition that you mentioned before?

MR. HART: Yes, sir, the depositions will explain ik complete detail. You recall that Mr. Kayner didn't remember. The other officers who were involved, Mr. McGraw,who is dead, and his deposition has not yet been read, and Mr. Gullati, who had no particular knowledge of this transaction, but who did testify to his knowledge of Mr. Mazzochi, and Mr. Gutstein, who I don't believe had as much contact with mutual credit union as anyone else, but those were the officers and their depositions will establish that Mr. Mazzochi was a frequent visitor to the bank over this period,on a continuing basis.

THE COURT: All right. I will take it subject to connection with those depositions.

Q Mr.Sixt, when Mr. Mazzochi came into the bank with that first $10,000 note and he said it wasn't his, did they tell you what he said?

A It belongs to my family, or members of my family.

Q What did he say he wanted the bank to do?

A Cash them.

Q By that you mean sell them?

A Right.

Q They weren't asking --

A He probably thought he could get cash right away.

MR. HALPERN: I ask that that be stricken, what he probably thought.

Q Is that an assumption you made, that he thought he could get cash right away?

A It is probable, yes.

THE COURT: It may be struck.

MR. JULIEN: Before you do that, Santoro's testimony supports that. Santoro said originally he wanted the cash.

THE COURT: Yes.

Q After they were sold, your Honor.

THE COURT: The witness just admitted that was an assumption on his part.

MR. JULIEN: He has to assume all facts to arrive at opinions.

THE COURT: Well, he can't assume it of his own, though.

Q Mr. Sixt --

MR.JULIEN: Forgive me. I don't want to take

any time.

THE COURT: He can't assume it on his own and that is what he has just told me, that he was assuming that this was what he probably wanted on his own, not that he --

MR. JULIEN: The assumption, however, is consonant with the testimony.

THE COURT: Not that he had any basis as explained to him by Mr. Komoroff, Mr. Schlesinger or Mr. Julien, or Jaris.

Go ahead.

Q Mr. Sixt, I show you a document or top of a series of documents, which have been marked Exhibit B. Now, this document has been identified as being the written authorization which Mr. Mazzochi gave to the bank when he brought in that first $10,000 note. Have you read it?

A Yes, sir.

Q Does that indicate that he thought he could cash these notes?

MR. JULIEN: Just a moment. That is totally unfair. Santoro testified this took place after Santoro had advised him that he couldn't get it in cash. Now, that is an attempt to twist the facts of this case.

MR. HART: Your Honor, the testimony was so

clear --

THE COURT: The interpretation of those documents is for the Court, not for a witness.

Q I ask you to assume, Mr. Sixt, that Mr. Mazzochi came in and said that the notes belonged to his family and that he wanted to sell them for his family.

Now, at that point, what do you believe that the bank should have done?

A It shouldn't have taken them. It is a red flag. They are not his. He is not the lawful owner. By his own admission.

Q Do you believe that in order to be able to sell a treasury note you have to be the lawful owner?

A Let me put it -- the bank is not a brokerage house, Number 1.

And it is prudent banking principle that you establish ownership of any large amount to any small customer. That is prudent.

Q Well now, we are dealing with $10,000 to being with, and try to keep in mind that we are not dealing with hindsight. In other words, it is easy to look back at a transaction and find a lot of places where --

MR. JULIEN: I don't think it is his province to deliver a lecture to this man.

THE COURT: No, I agree.

Q Without using hindsight, does $10,000 in treasury notes strike you as a large sum?

A For a young man? It is a large sum to me. You have to take the whole package. You have got a young man 26 years old, who is affiliated with small accounts, one of which is marked "don't pay against uncollected," which in itself is a red flag.

Q Well, let's take "don't pay against uncollected." What does that mean?

A It means the checks are bouncing that he is depositing. He is drawing ahead of time.

Q It means they are bouncing?

A It means the checks that he has deposited have been bouncing.

Q That means somebody is sticking him with bad checks?

A And he is drawing against funds that are not collected.

Q It doesn't mean his checks are bouncing?

A I don't know.

Q Well, you are relying on it, so you should have an idea of what you are relying on?

A I don't know whose checks they were. It could

have been his own. Wherever he had an account.

MR. HALPERN: I ask that be stricken, what could have been.

MR. JULIEN: It is responsive to his question.

THE WITNESS: I am answering his question.

THE COURT: I think it is responsive to his question.

In other words, don't pay against the uncollected funds could mean either way?

THE WITNESS: That's right.

Q It could mean that when this man puts money into his account and then wants to take it out again, doesn't take it out until the funds -- doesn't permit it out until the funds have been collected? Is that what this normally means on a business account?

A Yes.

Q The answer is yes, that is what it means. And it doesn't normally mean that there have been some checks that have been given to this company which have turned out to be bad and, therefore, be careful because perhaps he is dealing with people whose credit is not as good as it might be?

A Taken two ways. It may be his credit isn't too good. You pay against uncollected for good customers.

This account was flagged. I really don't know the whole circumstances. You are asking me questions and I don't know all the facts.

Q You see, I have no choice but to ask you about the facts that you say you relied upon in forming your opinion.

A Right.

Q So what you seem to be saying is that this notation, "don't pay against uncollected" is something which probably had meaning to the officers at the time?

MR. JULIEN: He isn't saying that. That wasn't his testimony.

Q Do you believe that the bank at the time that notation was put on there would have known what it meant?

A At the time it was put on?

Q Yes.

A I imagine so.

Q So it either could have meant that it was something unfavorable to whoever was running this account or not?

MR. JULIEN: It certainly can't be something favorable.

THE COURT: Wait a minute.

MR. JULIEN: I don't understand this.

A I think I answered before. I said it could be either way.

Q All right.

So therefore the fact --

MR. JULIEN: Your Honor, would you ascertain what the witness means by "either way"? Was he saying it could be favorable or unfavorable? Is that what he means?

MR. HALPERN: I object to this. The witness is testifying and we are getting these interruptions.

THE COURT: We are having Mr. Julien ask questions while Mr. Hart is cross-examining. The witness has said very plainly once, and I will say it for you once more and then we will have no more interruptions. He is saying that either it could be that Mr. Mazzochi was drawing against uncollected funds, or that checks were being deposited which were no good, which Mr. Mazzochi may have had an impression were good, and had drawn checks against.

nd 1B PM

Q You have been emphasizing his age as 26. Supposing he was 30, would that make a difference?

A Slight.

Q What difference would it make?

A It would give him three more years to accumulate some more money.

Q You mean you figure if he's older he's more likely to be richer?

A I didn't say that.

Q You said if he were older he would have more time to accumulate money.

A That's right. You are assuming that he was rich in the first place. You said richer.

THE COURT: When you say richer, you are assuming that he was rich.

Q In possession of greater amounts of money --

A Right.

Q -- is what I meant. I didn't mean he was starting as being rich and became even more rich. I was simply saying that he had more money than he had earlier. Is that what you are assuming, that the older he gets, the more money he has?

A The more change he has of accumulating more. Put it that way.

Q Of course, if a man came in who looked to be 50, that wouldn't necessarily give him any better standing with respect to a Treasury note than a man who was 25, true?

A I don't know what you mean by standing.

Q Does his age make any difference really in your consideration?

A Consideration of the amount. You see, I'm saying to you again --

Q We are talking about his age, not the amount.

THE COURT: You have to let him answer.

A You're bringing in -- I brought the age factor in because of the amount of money involved and the fact that it was his family. If a man gets older, it still doesn't change the prudent principle of ascertaining the ownership of the bond.

Q When someone is in his early 30s, perhaps late 20s, is it uncommon for him to get money from his family?

MR. JULIEN: I have to object to that, your Honor. This isn't a man that was getting money from the family. This is a matter of his attempting to sell something belonging to the family.

THE COURT: I don't think this is a matter

within the scope of the original report.

MR. HART: I believe it is, your Honor, because -- you mean the expert's report?

THE COURT: Yes.

MR. HART: Well, he was tying together two facts, the age and the fact that the man said they belonged to his family. As if that was a suspicious circumstance.

THE COURT: And you are asking him to speculate as to whether it is unusual for a person of that age to get money from this family, which has nothing to do with the situation. Because there is nothing --

A I couldn't answer that.

THE COURT: No.

MR. HART: I didn't hear the witness.

A I couldn't answer that.

THE COURT: It is strictly, you know, speculation.

Q I believe you said that in your opinion the bank should have told Mr. Mazzochi that they would not deal with him, is that what you said?

A I didn't say that.

Q What should the bank have done? Now, here is Mr. Mazzochi in the circumstances we have explained

and he's the president of this credit union, the members of whom are the citizdns in the area who are good customers of the bank, and he wants to sell a Treasury note. What should the bank have done.

MR. JULIEN: And he says it doesn't belong to him.

A And he says it doesn't belong to him?

Q Yes. We have all these facts.

A I wouldn't have accepted the order. I would not have executed the order.

Q That was it, I mean, you just say, "I'm sorry, Mr. Mazzochi" --

A You mean you want me to expand?

THE COURT: What should the bank have done?

THE WITNESS: I would say, "Where did your parents or family get this bond?" And "Let them sell it through their own broker or their own bank. We are not in the brokerage business and we don't handle it."

There's a normal practice for a bank to sell for a nondepositor, which his family would have been, or member of his family.

Again I go back to what I said before.

The principle of prudence in selling any security is to ascertain the lawful ownership of whatever you are selling.

Q So I'm saying now, I have asked you what the bank should have done in prudent banking, and you are telling me that what they shouhave done was tell Mr. Mazzicho to take his business elsewhere?

A It wasn't his business; it was his family's business.

Q Well, now, a Treasury note is a bearer security, is it not?

A Yes.

Q Are you familiar with Treasury notes?

A Very much so.

Q You have dealt with them all your banking life?

A Right.

Q As people and the courts have said, Treasury notes pass like currency, isn't that true, pass from one hand to another, and --

A They don't pass like currency, no. They don't.

Q How do they pass? What is the difference.

A They are bought and sold. When somebody

sells something, they make a good delivery.

Q What does that mean, make a good delivery?

A That the party who was selling it was the owner.

Q I'm afraid I didn't follow that answer.

MR. JULIEN: I object to that comment, I object to his comment.

THE COURT: We are not before a jury. I will make a note of it as a juror. Ask the question, please.

Q What determines good title to a Treasury note?

A The bill that -- when you bought it, if it were in your name.

Q These are bearer securities.

A You have got to buy them somewhere. Usually through a broker or a bank.

Q Or from a friend. You can buy it from a friend, can't you?

A I guess you could.

Q How about winning it in a crap game; is there anything wrong with that?

A Winning it in a crap game?

Q Sure.

A I don't know.

Q I mean does that mean if you win it in that way and somebody gives it to you as a result -- assuming we are in a place there is no law against gambling, don't you have good ownership, the right to possession of that Treasury note? Isn't it yours?

A It is yours because you have possession.

Q Supposing you have inherited it from your uncle, he dies and there it is, it is yours. You have it, don't you?

A Right.

Q You get title to a Treasury note by having the Treasury note in your possession, isn't that right?

A You have possession, you don't have title.

Q But you do have possession?

A Right.

Q Now, what do you see as a distinction in your mind between possession of a note and title to the note?

A He could have picked it up off the street before he came into the bank. He has possession.

Q But it is not his.

A But it is not his.

Q Whose is it in that situation?

A The fellow who lost it. You see, you are

trying to compare a bank with a broker. Most banks tell people to go to brokerage houses to sell them.

Q Are you saying that banks generally are not in the business of dealing in securities?

A I didn't say that. Byting and selling for customers.

Q Apart from any dealing -- let's make it clear now -- we are not talking at all about any transactions which the bank engages in for its own account. Banks, we know, make investments from time to time of their own money and we are not talking about that at all; we are talking only about transactions which banks engage in for customers. In that context, was that your testimony, that banks don't engage in this business?

A On a restricted basis we don't buy and sell for everybody.

Q It's a courtesy which they perform for customers?

A It's a courtesy which is extended, sometimes with a fee.

Q And sometimes not?

A Sometimes not.

Q And it is extended to depositors from time

to time, depending on who they are?

A That's right.

Q And is it also extended to individuals who are affiliated with corporate accounts?

A It might be.

Q I see from the statement of your background that you have been involved with banks in many parts of the city. Have you in your experience found it to be uncommon for an individual to work in one area and live an another area?

A It's not uncommon.

Q In such a situation, such an individual would normally be where he works during banking hours, would he not?

A Right.

Q And therefore it would not be unusual for him to want to do his banking transactions where he works rather than where he lives, is that correct?

MR. JULIEN: Excuse me.

A Where he maintains --

MR. JULIEN: Just a minute. Is counsel addressing h imself to this case? In whichcase there is no proof that this man does any work or did any work in the area where this bank was located. All

of his accounts, those two, are Brooklyn addresses. Nobody claims that he was on a day-to-day basis at any so-called credit union, which meant one night a week. Where does this come from?

THE COURT: I am going to sustain the objection.

MR. HART: Subject to connection, your Honor, may I have it in? He was in the bank frequently, your Honor.

THE COURT: I agree he was in the bank frequently, but the point is he wasn't in the bank frequently with respect to his own account. That is not in the record. He was in the bank frequently but with respect to small accounts.

MR. HART: That's correct.

MR. JULIEN: And nothing about his working in the area, nothing.

THE COURT: We have nothing in the record so far as I can see. Both witnesses who were employed by the bank couldn't identify where he worked or what he did.

MR. HART: Well, of course, Mr. Santoro was not an officer and did not have that relationship.

THE COURT: Mr. Kayner couldn't either.

MR. HART: Mr. Kayner said at the time he was sure that he knew whatever the bank knew about Mr. Mazzochi, and Mr. McGraw and Mr. Gulotti in their depositions explained he wasn't in the bank frequently, on their depositions.

MR. JULIEN: You are saying he works in the neighborhood. That is a fact which appears nowhere in this case.

Q Is it unusual for an individual to want to engage in banking transactions in a place where he spends a considerable amount of time during banking hours rather than at his home.

MR. JULIEN: I have to object to that.

THE COURT: I will let it in. What difference does it make?

MR. JULIEN: That sounds as though he was a security guard.

THE COURT: It has nothing to do with this case, but what difference does it make? It's not unusual.

THE WITNESS: It's not unusual. However, he didn't have an account there, a personal account.

Q Correct.

A Okay. I just wanted to establish that.

Q When you say you want to establish it, you mean you want to make it clear --

A That it is in my mind that he was a non-depositor.

Q -- that is what you were told in forming your opinion?

A Yes.

Q We come back to what you believe the bank should have done when Mr. Mazzochi came in with the $10,000 note and said it's his family's and he wants to sell it, and you say that they should have told him to please go to a brokerage house or go to whatever your family lives?

A Not him, they.

Q They are not there. He's the only one that they are talking about.

A "Tell your family," or whoever owns the bond.

Q The officer of the bank is sitting talking to Mr. Mazzochi. He's the only one who is there. And he says, "I'm here to sell this for my family." So the officer can only talk to Mr. Mazzochi, and is it your testimony that the bank should have said to Mr. Mazzochi at that point, "We don't do this kind of busi-

ness, we don't want to do this for you. Take it to a brokerage house or ask your family to sell it wherever they bought it"; is that what you are saying?

A I would say it a little differently. I would say, "Tell your family, whoever owns the bonds, they should go to the broker."

He has no authority to sell these bonds, or this bond.

Q In order to get authority to sell the bonds, what would be required beyond whoever in his family did have the right saying to him, "Please sell the bond for me"; wouldn't that give him authority?

A I would not have accepted it. We are not in the brokerage business and they should take that bond to a brokerage house or their own bank and sell it.

THE COURT: I think at this point we will suspend, gentlemen, until 10 o'clock Monday morning.

(Adjourned to August 11, 1975, at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Thomas O. Rockafeller	302	325	403	
Frank W. Sixt	425	428		

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
44		300
45		301
46		303
1		310
2		323
47		402
48		408
14,16,49		424
50		425
Defendant Royal National Bank		
H		338
J		344
Defendant Merrill Lynch		
L	383	

United States Fidelity & Guaranty Co.

vs. 68 Civ. 2054

Royal National Bank of New York, Merrill Lynch Pierce, Fenner & Smith, Inc.,

New York, New York.
August 11, 1975- 10:00 A.M.

(Trial resumed.)

THE COURT: All right.

MR.HART: Before the witness takes the stand, your Honor, may I, with the Court's permission, substitute for Plaintiff's Exhibit 16 the originals from which the copies were made because the backs of the originals weren't copied and Exhibit 16 therefore doesn't reflect the back of the documents.

MR. JULIEN: I have no objection.

MR. HART: May the record note that we are physically making that substitution.

THE COURT: Yes. Mr. Halpern, I assume you have no objection.

MR. HALPERN: No, none whatever.

THE COURT: All right. All right call the witness.

FRANK W. SIXT resumed.

CROSS-EXAMINATION (oontinued)

BY MR. HART:

Q Mr. Sixt, doyou still have in mind the facts that you had outlined to us on Friday which had been told to you by the attorneys for the plaintiff and which formed the basis for the opinion which you expressed?

A Yes, sir.

Q Now, it is my recollection that you said, in general, that in a situation such as the one we are discussing where a person asks the bank to sell Government bearer securities, each transaction must stand on its own.

You said that, I believe, a number of times.

A I did.

Q And in talking about the first $10,000 transaction that the bank engaged in with Mr. Mazzochi, I believe you said that you would not have executed that order if you were the banker making that decision, is that correct?

A That's correct.

Q Now, that was a request by Mr. Mazzochi for the bank to sell the treasury note for him, correct? That is the fact that you were dealing with when Mr. Mazzochi walked in and asked the bank to pleaee arrange for the sale for him?

A Right.

Q If he had come into the bank and asked the bank to buy the note from him directly, would your answer be the same, that the bank shouldn't have bought the note from him?

A I would have required proof of ownership in view of what I said before: No account seemingly not too much in the way of assets.

But let me add this. I think you said before that we rejected him even though he was with the bank so many years. You do not do it that way. You do it tactfully. You don't want to embarrass the customer or whoever is coming in there. We are not compelled to sell securities. It is a favor. They go to brokerage houses to get securities. It is not a day-to-day thing at most branches.

Q Well, would that really be then the reason for your refusal to do it, that banks don't do that sort of thing? I mean, is that a major part of it?

A Well, the major part is you have to ascertain the ownership for the securities.

Q How do you ascertain ownership of Government bearer securities?

A For the sale from a broker.

Q I believe you told us that in your banking experience, which extends over a period of almost 50 years, you were very familiar with the handling of Government bearer securities.

A Yes.

Q Do bills of sale generally accompany transactions involving Government bearer securities?

A Not in all cases. It depends again on the case.

Q Well, in which case, in which type of a case?

A Well, customers who have loans with you, securities in and out, part of which were Government securities, in order to establish a good banking relationship over the years, in relationship to the amount of securities --

Q I meant --

MR. JULIEN: Just a moment, please. May the witness respond before he is interrupted, your Honor?

THE COURT: So far as I know, he hasn't responded tothe question which was asked.

MR. HART: I believe the witness was answering in which case he would ask for bills of sale.

Q I mean in which transaction involving Government bearer securities would bills of sale normally accompany the transfer of the securities.

MR. JULIEN: That isn't the testimony that he gave, your Honor. He didn't talk about accompanying the transfer of the securities. He said that it attached to a transaction such as the one we are dealing with or that general type, or somebody who doesn't have a personal account hasn't established a series of --

MR. HART: Your Honor, is it possible to ask counsel to state his objection without comments?

MR. JULIEN: Is it possible to ask counsel not to convert the answer to a different kind of a question and assume that that has already been said by the witness? He didn't say that.

THE COURT: He said that he would ask for a bill of sale. He is now asking him whether or not all of the transactions in treasury bills were accompanied by bills of sale. He said no.

Now he is asking him in which do they and in which don't they.

MR.JULIEN: That question I would not object to. If that is the question I would not object to it.

THE COURT: That is the question.

MR. HART: Your Honor, may I request the Court to ask Mr. Julien to state the fact that he has an objection without trying to comment on what he thinks I

should or should not be asking.

MR. JULIEN: It is a pretty late stage for him to be asking that.

THE COURT: I am asking of all three parties that you conduct yourselves in that fashion.

MR. HART: Thank you, your Honor.

Mr.Sixt, do you understand the question that is pending?

THE WITNESS: I am trying to sift them.

THE COURT: In which cases do bills of sale accompany purchases of treasury bills.

A Let me preface my remark. You develop a sixth sense when you are dealing with customers and securities.

MR. HART: Your Honor, may I interrupt the witness? I believe he is not addressing himself to the question.

A There is no standard rule or procedure. However, if there is any doubt in your mind, and if the situation as it presents itself requires that you get proof of ownership, you get it.

THE COURT: Ask him again.

End 1A

Q Mr. Sixt, I am not addressing myself now to a situation where a person comes to a bank and asks the bank to engage in the sale of a security, and the bank is determining what or what not to do. I am not talking about that at this point. I am talking about situations in which government bearer securities change hands in the ordinary course of commerce without any problems, without any thefts, without anything other than a normal commercial transaction, one person, or one company is transferring a government bearer security to another person or another company.

Now, in those types of transfers, do bills of sale normally accompany the transfer?

A Not always.

Q In which situations do they accompany the transfer?

A I have to repeat myself. It depends on the situation. The situation before us would demand that you would get a bill of sale.

Q Now, in the situation before us, which I said is not one we are talking about, Mr. Mazzochi was not asking the bank to buy the Treasury notes from him, correct? He asked the bank --

MR. JULIEN: Excuse me. Even there, if

your Honor please, that's not consonant with his original request, which was precisely that.

THE COURT: Mr. Julien, you are voilating the rule that I have just laid down. Please sit down.

MR. JULIEN: These questions require some objection, your Honor. How am I to tell you what I have in mind?

THE COURT: Please sit down.

Q Let me try it again, Mr. Sixt.

Treasury notes, or other types of government bearer securities, are issued by the United States of America, is that correct?

A Yes.

Q Do you know which department issues them, or which organization?

A The Treasury Department.

Q And is it the Bureau of Public Debt?

A Right.

Q Now, when the Bureau of the Public Debt comes out with an original issue of a government bearer security, how does that security reach the hands of the public?

A They may subscribe to them, for them, through banks or by them through a brokerage house, and one, like Salomon Brothers, one who is a recognized bond broker

or agent.

Q You mean when the United States of America decides to come out with a new series of bearer securities, if you want to buy it, you go to a brokerage house, or a bank?

A Or a bank.

Q Or a bank?

A Yes.

Q Is there any other way?

A Offhand I can't think of any.

Q Isn't it possible to buy that directly from the United States through the Federal Reserve Bank?

A As an individual?

Q Yes.

A Certain issues, certain issues were permitted to be bought that way. They are mostly bought in the way I suggested.

Q I'm sorry?

A They are mostly bought in the way I just stated: brokerage or banks.

Q But some can be bought from the Federal Reserve Bank directly?

A Certain ones may. I can't differentiate.

Q You do not know which ones?

A No.

Q Do you know whether bearer securities, bearer securities can be bought in that way?

A From a bank or a broker.

Q From the Federal Reserve Bank?

A I'm not sure. I don't know positively.

Q Well, in your 50 years of banking experience have you had occasion to become involved in a transaction where an individual did buy directly from the Federal Reserve Bank?

A No.

Q No?

A No.

Q Do you know whether a bill of sale accompanies a purchase by an individual from the Federal Reserve Bank?

A I don't know positively but I know when we buy them for a customer through the Federal or its subscription, a letter of transmittal accompanies. We have to put the name of the customer down, the amount he wishes to buy.

Q But you say that's when the bank buys from the Federal Reserve Bank for a customer?

A Original subscription?

Q Original subscription.

BEST COPY AVAILABLE

A Otherwise it's done through a brokerate house or houses.

Q Let's stay with the bank for a moment.

You say a letter of transmittal accompanies the certificates. That's a letter from the Federal Reserve Bank?

A Well, it's a letter prepared by the Federal Reserve Bank given to the banks.

Q And then the bank delivers that letter to its customer with the certificates?

A Pardon?

Q You say that the bank delivers the letter of transmittal to the customer with the certificates.

A No. The customer signs, fills out a letter of transmittal, which accompanies the bank's request to subscribe. You are talking about subcriptions now, because many times they are oversubscribed. In other words, someone may subscribe for $10,000 in gonds and only eight will be allotted.

Q I guess that I didn't understand the use of your terminology. When you said a letter of transmittal, it would be really in the form of a letter request rather than a transmittal?

A Right.

Q And that, together with the request of the bank, is delivered to the Federal Reserve Bank. Now, let us suppose that the customer is able to have his order filled, is it notoversubscribed? What does he receive back?

A He receives a bond back from the bank and a receipt. In other words, they make up a safekeeping receipt and he signs for delivery to him of the bond that he subscribed to.

Q He gives that to the bank -- the receipt? The customer gives it to the bank, right?

A Right.

Q And the bank gives the certificates to the customer, is that correct?

A That is correct. He gets a copy of this receipt, a copy of --

Q Of what he gave to the bank, he gets a copy of that?

A Yes.

Q What else does the bank do?

A Nothing, to my knowledge.

Q In that situation, is the copy of the receipt that the customer gives to the bank showing that he has received it something which he signs himself?

Is that what you refer to as a bill of sale?

A No. It could be -- that isn't a bill of sale. It's only when he bought it through a brokerage house. The original subscription, which would merely indicate that a bond has been delivered to him which he ordered.

Q In that situation, what proof of ownership would that individual have, or what proof would he have to his right to possess these notes --

A If he presented that note, my logical question is, why don't you go back -- to phrase it differently, I suggest you go to the bank that bought them for you. He had the receipt. Whatever bank it is.

Q Suppose he didn't have the receipt?

A Well, he knew where he got them. If he didn't have the receipt, he couldn't show proof of ownership, I wouldn't take it.

Q Does the receipt really show proof of ownership or does it simply show --

A His name would be on it. That's an internal question, how they put it on it. There is no standard . But it would indicate that bonds were purchased or subscrubed to for his account, his name would appear on it, and the bond number, incidentally, the number of the bond.

Q If I am following you correctly, there is a document which the customer himself signs which says, "I," and he puts his name, "hereby acknowledge that I have received from Chase Manhattan Bank," for example, "the following listed government bearer securities," and

he puts down certain numbers, and he signs his name; correct?

A Well, again, each bank has its own form. In my particular bank that would appear on the reverse side which says, "Received the above securities."

On the front of it it would indicate that we bought them for him, or we exercised a letter of transmittal for him, for his account.

Q Do you have any of those forms?

A No.

Q This is a document, you say --

Q It is similar to what you showed me, that letter of transmittal to the broker. It's a window ticket.

Q Are you referring to Exhibit 8?

A This is a delivery ticket. The other would say that "We have delivered to Mr. Frank Mazzochi," and in parentheses, if we wanted to put it that way "(for a subscription account)," or whatever it was. Then he would sign. The reverse side of ours is a receipt for the securities.

Q And that is the document that you are referring to when you talk about proof of ownership or proof of right to possession in that situation, is that cor-

rect?

MR. JULIEN: Do I understand the series of questions to be on the question of original subscription?

MR. HART: Yes. I am limiting myself to a situation where the customer comes to a bank and the bank makes an application to the Federal Reserve and delivers the notes to the customer with the document which is signed on the reverse.

A Don't forget, Mr. Hart, in the initial subscription he had to pay for it, either a check on that bank or a cashier's check.

Q Or cash?

A He has already paid for it.

Q Yes. You can pay for it in cash, can't you?

A You can pay for it in cash.

Q And that document is the proof that you are referring to?

A It is one of the proofs.

Q In this situation as you have described it it would be the only proof, correct?

A That's right.

Q When the bank delivers -- in your experience

now, because let's talk about your experience with First National City Bank, when the bank delivers the securities to this customer, does someone on behalf of the bank say to him, "Here are your securities, and here is a copy of your receipt, and don't lose the copy of your receipt because without it you will not be able to prove that you have the right to have these certificates"?

MR. JULIEN: I object to the form.

A No.

THE COURT: Overruled.

Q They don't say that, do they?

A No. For a very good reason. You assume that the people know that. People who buy securities are usually knowledgeable.

Q And you would assume that a knowledgeable person would be aware of the fact that if he did not keep this receipt then he would never be able to persuade anybody that these bearer certificates are properly his, is that it?

A No, that is too broad.

Q You said the bank does not tell its customers to keep this receipt. If it is such an important document, why not?

A You make it so broad. When you have

securities -- if I have securities I attach the bill for income tax purposes either directly to my securities or I put them in my safety deposit box. You need it for tax purposes, right? You don't tell them directly the way you put it.

Q You don't?

A They are securities. You say, "Put these in the safe-deposit box."

Q But you don't say put the receipt in the safe-deposit box. Is there any instruction which advises the customer of the bank it is advisable to keep the receipt with the securities?

A No.

Q In your experience, most of your customers keep the receipts with the securities because they recognize --

A Either with them or in a safe place. I would assume so.

Q In your 50 years of banking experience have you had occasion to take government bearer securities from customers for one reason or another?

A Yes.

Q What were some of these reasons?

A Either to sell them, put them up as

collateral. In many cases where they want to put in a bid for a contract they either put in a certified check or government bonds.

Q You mentioned taking notes as collateral. Coming back to Royal Bank's transaction with Mr. Mazzochi you had expressed your opinion with respect to a situation where Mr. Mazzochi asked the bank to sell the notes for him, and you expsressed your opinion with respect to a situation where Mr. Mazzochi might ask the bank to buy the notes directly from him. Now, you mentioned taking the security. If Mr. Mazzochi had asked the bank to lend him money and take these notes as collateral for the loan, would your opinion about what the bank should have done in this transaction remain the same?

A It would. I just want to go back to what you said, to buy them directly from him. The bank does not buy directly from him, they buy or sell through a broker. The sourse of the funds from those securities came from a brokerage house, not directly from a bank.

Q You mean in the situation involved in this action?

A That's right.

Q Let me say, Mr. Sixt, that if you nod your head one way or the other, the reporter does not get your answer. It is necessary to say yes or no. That's why I sometimes hesitate to give you a chance to say it so the reporter can take it down.

But you said then that whether it was a request to sell the securities or a request to take securities as a collateral for a loan, it doesn't really make any difference, the situation remains the same, and your opinion would be the same, correct?

A Right.

Q In those instances in which you were taking government bearer securities from a customer during your 50 years of banking experience, either to sell or as collateral for a loan or as collateral in connection with a certified check or a bid, in those situations did you ask your customers for this bill of sale that you have mentioned?

A It depends on the situation. If you ahv have had a customer for 30 or 40 years and your file indicates, from financial statements and antecedent information, that this is a man who would have this type of security or this type of asset, you might not in those circumstances ask for a bill of sale.

Again, each case, as I have mentioned before, is an individual case.

Q Each transaction stands on its own. You have said that.

A That's right.

Q Now, have you had occasion to ask for a bill of sale from a customer?

A Yes, sir.

Q Would you tell us in what circumstances and when?

A When? The when is what bothers me. Over the years, but not too frequently, we have had people come in with large amounts of securities and I would ask for a bill of sale because they didn't bear any relationship to the apparent net worth as evidenced by what we had on record in the bank.

Q Government bearer securities?

A Government bearer securities.

Q And what type of a document did you ask for?

A A bill of sale. A financial statement.

Q Let's take them one at a time. Let's take a bill of sale. Did you ask for bills of sale?

A Yes.

Q And what did you get?

A I got the broker's confirmation, which would give his name, amount of securities purchased.

Q So then nobody ever gave you one of these receipts from a bank, for example?

A No.

Q Would that have satisfied you?

A Again, depending upon the situation, I would say yes, that would have satisfied me.

Q So you say then that in your experience you have had occasion to ask the customer for a bill of sale involving government bearer securities, and you received a broker's confirmation slip?

A That's right.

Q And that satisfied you that the customer who was presenting these securities had the right to possess them or had ownership of them, is that correct?

A Yes.

Q What is it, a broker's confirmation slip that establishes that the person presenting it has a right to possess the securities which he has presented?

A A broker's statement or a bill with his name on it and describing the security.

Q You're talking about the document which

a customer of a brokerage house receives when he makes a purchase which tells him what he has bought and how much he owes the brokerage house, is that correct?

A That's right.

Q You say this describes the securities and has the customer's name on it?

A That's right.

Q How does it describe the securities?

A Well, there are two columns in most broker's statements. One is bought, and one is sold. And under the bought they will put the amount of securities -- the description of the security, 10,000 U.S.treasury notes, with the maturity, the amount of money involved, the total amount paid by the customer for the purchase of these securities.

Q And that is sufficient evidence for you that the person presenting the confirmation slip has the right to possess these securities?

A I would like to go back. Are you making it general or someone that comes in on each individual transaction? Anybody who walks in off the street I wouldn't accept that. I wouldn't accept that from anybody coming in off the street.

Q What would you want from somebody coming in off the street?

A I wouldn't take the order. I wouldn't entertain it. We are not in the brokerage business.

Q In order then to entertain an order like this you would have to have a reason to provide a service to someone you know, is that correct?

A A customer. Not someone I know.

Q We discussed what a customer means on Friday, and you said that a customer is a person who has money on deposit with the bank. Andyou said that a person who is affiliated with a business which is a customer is not a customer, but nevertheless can have business dealings with the bank in that capacity as a person affiliated with a customer. Correct?

A Correct.

Q Now, a person in that latter category, which if you will accept the terminology just for identification purposes, we can call an affiliated customer -- can we call him that just so that we know that we are talking about somebody different from a customer, but not someone who has just walked in off the street -- can we do that?

A Right.

Q Would an affiliated customer be someone for whom you might be willing to perform this type of service?

A I might.

Q If you were dealing with an affiliated customer, would you accept a broker's confirmation slip as proof that the affiliated customer had the right to possess or had the ownership of the certificates which he was presenting to you?

A Again, depending upon the situation, the amount

of money involved.

Q If I understood your testimony correctly on Friday, the amount of money involved would determine whether or not you would engage in the transaction at all?

MR. JULIEN: I object to that. May I tell you why?

THE COURT: Yes. Why?

MR.JULIEN: Because it is not my recollection of the testimony. I think that counsel has stated it in much broader lines than did the witness.

MR. HART: I will withdraw the question and ask the question, if I may.

Q In considering the amount of money involved, does that go to the question of whether or not you will engage in the transaction at all with the affiliated customer?

A Yes.

Q Assuming that you have decided, weighing all the factors, that you would like to engage in the transaction with the affiliated customer, then would you in addition require some proof of ownership or right to possession of these bearer government securities?

A Yes.

Q In such a situation,would a broker's confirmation

slip be satisfactory proof of ownership or right to possession?

A A broker's statement would be -- I would give that careful consideration.

Q I assumed that you would be giving everything careful consideration.

A Yes.

Q The question was, would the broker's confirmation slip be for you satisfactory proof of ownership or of right to possession of the certificates which the person whose name appeared on the confirmation slip was presenting to you?

A In the first ten, I would have accepted it.

Q We will come back to Mr. Mazzochi and the Royal National Bank, but I want to find out in your view how bankers generally operate.

You have been in the banking business for 50 years, or you were in the banking business for almost 50 years, and you said that you engaged in many of these transactions over the years. Now, in your capacity as a very experienced banker --

A Mr. Hart, you said many of these transactions dealing with Government securities.

Q Yes.

A Not necessarily coming in to buy or sell. I took them as collateral.

Q Did you engage in the transactions where you bought and sold Government bearer securities?

A Most of these originate through the sale of securities that were pledged as collateral for the loans. Most of them.

Q In the situation where the loan is defaulted or not paid for one reason or another, the bank is called upon to use the collateral, is that what you are saying?

A No. The customer came in. He may have bought the bond at a depressed rate and now they take a profit, or they decide the return isn't good enough so they sell the Government securities and liquidate the loan.

Q At that time, though, you had already taken the security from the customer, is that correct?

A That is right.

Q And that is the situation where you take the collateral -- I am sorry, where you take the security as collateral for a loan, and you say you engage in many of those transactions?

A That is true.

Q Did you engage in many transactions over the years involving the straight sale of Government bearer

securities without first taking it as collateral?

A I had many transactions in that line.

Q Of that type?

A Of that type over the years.

Q Over the years. Well, 50 years is a long time.

A Over the years we had a lot. It wasn't a day-to-say situation,though.

Q Well, you already said, I believe, that banks aren't brokerage houses.

A That's right.

nd 2B

Q So when they performed this function of selling a security for a customer, it is a service?

MR. JULIEN: Aren't we repeating a great deal?

THE COURT: Yes, we are. It is very repetitious, Mr. Hart.

THE WITNESS: Mr. Hart, may I say one thing? Regarding banks buying and selling securities for the account of customers, the prime reason that I have gathered is that customers want the assurance that the securities they buy will be received and the securities that they sold the bank would be responsible to get that money to them, and they don't mind paying -- we get 20 per cent of the broker's commission, and they don't mind paying that for the securities that they get in delivering securities or moneys to purchase or sell securities.

Q You mean First National City Bank got 20 per cent of the broker's commission as its commission, is that whatyou are saying?

A That's right.

Q And that is when it rendered a service for a customer, or an affiliated customer?

A Right.

The commissionw would be waived.

Q I show you Exhibit C and ask you whether this

is the type of broker's confirmation slip that you say would be proof of ownership or right to possession of certificates?

A Not this one.

Q Why not that one?

A Because this is theRoyal National Bank.

Q I didn't mean that particular document for the particular customer.

A If the name of the purchaser were in here, then this would be an accepted broker's statement.

Q And if someone presented such a slip to you and his name appeared on it, and he himself presented Government bearer securities of the same issue, would you therefore be satisfied that he had the right to possess or own the certificates he was presenting?

A Again, I have to repeat: Each situation is an individual one. I would have to know the party presanting it. I must have had to have known him for quite a while.

Q Please make the assumetion that you have known him for more than a year, and he comes in and you want to engage in this transaction with him; now, with a document of the sort of which Exhibit C is one, would that satisfy you that this man had the right to possession of the

certificates which he brought in, the certificates were of the same series reflected on the slip?

A Yes.

Q Now, on that slip, does it anywhere reflect the certificate number?

A No, sir.

Q Then, does that slip reflect anything more than a transaction in a series of Government bearer securities?

A I don't follow the question, Mr. Hart.

Q Would a slip of that type do anything more than indicate that the person involved in the transaction had engaged in a transaction involving Government bearer securities of the series reflected?

A (no response.)

Q Would it show anything more than that?

A No.

Q Would it show anything with respect to the particular certificates which he was bringing in?

A No.

MR. JULIEN: You mean the number or the series? Which?

Q The particular certificates bearing the particular certificate numbers.

A It doesn't give the certificate numbers. It

gives the due date and the rate of the bonds.

THE WITNESS: You know a very --

Q Excuse me. Do you know in what denominations Government treasury notes are issued?

A Treasury notes are issued in 10-- it depends. Now let me go back a little bit.

Bills are 10,000. That is the minimum.

Treasury notes may be anywhere from one to 10,000, depending upon the need of the Treasury at the time. There are many $1000 treasury notes. The Government bonds are $1000 denominations.

Q Let's stay with treasury notes because that is what the slip that you are holding, for example, relates to U.S. treasury notes series A 1970, 50 per cent, is that correct?

A That's right.

Q Now, the notes you say are issued denominations of $1000?

A Three may be five or tens.

Q They could also be 100 or a million, can they not?

A I would imagine so. I am not positive or familiar with that.

Q Do you have any idea of the total face value

of Government bearer securities of the series reflected on Exhibit C which were outstanding in August of 1966?

MR. JULIEN: Objected to as immaterial.

THE COURT: Immaterial.

Q The top slip on Exhibit C reflects a transaction involving $10,000 worth of Government bearer securities of the series indicated, is that correct?

A YES,SIR.

Q Is there any way of telling whether that was a purchase of ten $1000 note or two $5000 notes?

A No.

Q Well, if your customer or affiliated customer came in and showedyou one of those slips and he had twenty-two $5000 notes,how wouldyou know that those notes related to that slip?

A I wouldn't.

Q But nevertheless,you would take it as proof of ownership or proof of right to possession?

A May I say something Mr. Hart?

Q Please answer my question.

A Yes.

Q You would. Okay. Now, let's turn --

MR. JULIEN: Just a moment.Evidently the witness is attempting to complete an answer.

THE COURT: Wait a minute. I don't want anything volunteered from the witness. You can do whatever you want when your turn comes. This is cross-examination.

THE WITNESS: Your Honor --

THE COURT: No.

Q Now, let's return now to the transaction with Mr. Mazzochi and Royal National Bank, and you had said that on the facts that you understood, the bank had regarding Mr. Mazzochi, that in your opinion the bank should have refused to engage in this transaction for Mr. Mazzochi, is that correct?

A That's correct.

Q And is the essential reason for that that when Mr. Mazzochi came into the bank in early August of 1966, the bank didn't have sufficient knowledge about Mr. Mazzochi to justify a transaction of this sort? Is that the basis for your opinion?

A No, sir.

MR. JULIEN: Just a moment, please.

THE WITNESS: Oh, I am sorry.

THE COURT: He hasn't answered it.

Q What was the basis?

A That was one of them. He said they didn't belong to him. He said they belonged to his family.

Q So you say that the fact that they didn't know about him was one and that he said they belonged to his family was another?

A Right.

Q What else?

A Well, that's it.

Q Those two?

A Yes.

Q Do you thinkthat it might change your opinion if the bank had known more about Mr. Mazzochi?

A No.

Q Would the nature of any reference that the bank had received about Mr. Mazzochi have made any difference in your view?

A No.

Q Do you know that Mr. Mazzochi was an officer of a credit union? If the bank had been informed by the credit union that Mr. Mazzochi had to be approved by the State BankingDepartment in order to serve in that capacity,would that make any difference in your view?

A No.

Q Your view is that because Mr. Mazzochi came in and said that these notes belonged to his family and he wanted to sell them for his family, the bank should not

have dealt with him?

A That's right.

Q I believe on Friday you said that you would have asked for authority from Mr. Mazzochi -- I am sorry. You would have asked Mr. Mazzochi to furnish you with authority from his family for him to sell the notes.

Now, was I mistaken or did you say that?

A I don't remember having answered that in that vein.

Q So you are saying then that because he said they belonged to his family, the bank shouldn't have dealt with him?

A That's right.

Q And anything the bank knew about him wouldn't make any difference?

A That's right.

Q I ask you to assume that Mr. Mazzochi didn't say they belonged to his family, but rather said that they were his.

MR. JULIEN: I object to it.

THE COURT: I sustain the objection.

MR. HART: Your Honor, the deposition of Mr. McGraw, the deceased Mr. McGraw, with respect to the fourth transaction would reflect that Mr. Mazzochi said

the notes belonged to him and we will be putting into evidence an affidavit which the bank obtained from Mr. Mazzochi saying that the notes were his.

MR.JULIEN: Mr. McGraw doesn't come into the situation until September 9, if your Honor please, and the only time the affidavit is taken is after receipt of all the bonds when they put the 70000 in the suspense account. It is not the same thing at all. The testimony of that first credit officer is very clear on this point.

MR. HART: On the first conversation, your Honor.

MR. JULIEN: On every conversation with respect to these notes.

THE COURT: All the conversations that Mr. Santoro had.

MR. JULIEN: Santoro and the credit officer too.

THE COURT: Well, only with respect to the first three transactions. I am going to revise my decision, because the testimony contains such information on the examination.

Ask it again.

End 3A

Q I ask you now, Mr. Sixt, to assume that Mr. Mazzochi did not say they belonged to his family but said they belonged to himself.

THE COURT: In the context of the fact that this was his fourth transaction?

MR. JULIEN: Yes.

MR. HART: Or perhaps his third.

THE COURT: Third or fourth.

Q Now, I ask you --

A You mean the one starting with $60,000 or the 10?

THE COURT: There were four transactions, right?

THE WITNESS: Right.

THE COURT: 10, 60, 70 and 70.

MR. JULIEN: 72.

THE COURT: 72 was the last one.

What we are saying is, assuming that he came in on the third transaction, you had done the first two already, and then he said to you, these notes belong to me, what would your reaction have been? Would you have gone through with the third and fourth?

A I would not have gone through with the second.

THE COURT: That's not the question.

We are asking you this question as an expert. You have gone throuth the first two.

THE COURT: What would you do on the 3rd and 4th?

THE WITNESS: I wouldn't have taken it.

THE COURT: Why?

THE WITNESS: Well, after the second one I knew I made a mistake. I was sure I made a mistake because the amount of money involved did not clearly indicate to me that this was a man who had that kind of money. You have to use due diligence. It's an inusual cash transaction. It all boils down to that.

Q Well, now let's take these names one at a time.

With respect to the first $10,000 transaction where he said it belonged to his family you said you would not engage in that transaction with him regardless of what you knew about him?

A Right.

Q Now, with respect to the third transaction, assuming he came in and said, "Those notes belong to me," then you say that you would not have made the transaction because you didn't know enough about them to justify this

advice, is that correct?

A Yes.

THE WITNESS: Your Honor, I have to get something clear in my mind. You are asking me about the third transaction when I tell you I wouldn't engage in the second transaction. I can't put myself in the position of having made that error when we presented the third 60, or whatever it was.

Q The error being having sold the notes for Mr. Mazzochi when they said they belonged to his family.

A That's No. 1.

And No. 2, the amount of money involved.

Q But the amount of money involved depends upon what you know about Mr. Mazzochi and you said it doesn't matter that you know about Mr. Mazzochi.

MR. JULIEN: Objection.

THE COURT: Sustained.

Q You made reference to an unusual cash transaction. What did you mean by that?

A Well, the control of currency in the Federal Reserve Bank requires that unusual cash transactions be reported. These are transactions which are large and disproportionate as to the person or persons engaged in these cash transactions.

Q Where does the cash transaction come into play in the situation where a customer or affiliated customer presents government bearer securities?

A It comes in when he draws it out.

Q He doesn't draw it out until you have agreed to accept it?

A The --

Q You said that.

MR. JULIEN: If there is a question, I should think there should be an answer before you proceed to the next question.

Read the question.

(Question read.)

A It came in when he drew the cash out, right? However --

MR. HART: Can I ask him to stop at the "However"?

THE COURT: Yes.

Q Mr. Sixt, the unusual cash transaction -- the one you are talking about -- happens after the notes are sold and the proceeds are delivered to the account of the customer, is that correct?

MR. JULIEN: I object to that. May I tell you why?

THE COURT: Yes.

MR. JULIEN: You may recall the testimony first of the customer's desire to have cash at once, and secondly, of his having secured approval of a cash check even before the second series is accepted. On August 8th he already has a cashed check signed by an officer of the bank so I don't think that the question is compatible with the facts. The customer's desire to cash was immediately made known both from the original way he wanted the transaction handled and from the fact that a check to cash was drawn even before the account was opened.

THE COURT: I will allow the answer. Overruled.

Read the question back.

(Question read.)

A Right.

Q So, therefore, at least in the first transaction, any kind of cash transaction would not be a factor in your opinion, is that true?

A This is the 10,000?

Q 10,000.

A No.

Q Now, the 60,000, which was the second trans-

action -- I mean with respect to the 60,000, which was the second transaction -- are you saying that with respect to that transaction, whether or not the customer wanted the money in cash would be a factor that you would consider?

A Yes. I wish you would let me put in the "however."

Q May I ask the fact that he wanted it in cash would be a factor in your consideration?

A Oh, that's a most unusual request. I have never had anything like that.

Q You have never had anybody who wanted cash?

A No.

Q Supposing the customer had requested a bank check payable to his order for the proceeds of the transaction, would that be unusual?

A It would be unusual if he were not a depositor.

Q Does that mean it would not be unusual if he were a depositor?

A That's right.

Q What would make the request unusual if he were not a depositor?

A Well, initially, let me say this, I wouldn't

have even considered the transaction if he didn't have an account.

Q And therefore how he requested the proceeds would not really make any difference?

A If he opened an account, they might have opened for him if they so desired.

Q When you say that it would be unusual for him to request the money in the form of a bank check, if he were not a depositor, were you really saying that you would not have dealt with him if he were not a depositor?

A You mean Mr. Mazzochi?

Q I mean any customer.

A If he weren't a depositor I wouldn't have engaged in the transaction, period.

Q I don't mean to get you into inconsistencies inadvertently but you did say that you would engage in a transaction like this for certain affiliated customers, depending on the cricumstances, is that true?

A That's right.

Q Would that be true even if they were not depositors?

A When you asked the question "anyone not a depositor," you didn't use the word "affiliated."

Q Okay. I amend that and say an affiliated customer who is not a depositor, for such a person would you engage in a transaction involving these securities?

A Yes, depending upon the individual situation.

Q And if he had asked for the proceeds in the form of a bank check, would that be unusual?

A It would be unusual.

Q How would he ask for the proceeds if he weren't a depositor?

A That's where you use your selling technique. You would open an account.

Q You would ask him to open an account to try to get a new customer for the bank, is that correct?

A Right.

Q Did First National City Bank have a manual of any sort which related to transactions of this type?

A No. They tell you how to buy and sell securities but the proof of ownership is an individual situation. That is prudent banking.

Q Did dealing with an individual customer or an affiliated customer who may open up an account, if you can handle the transaction for him, does the bank re-

quire a financial statement?

A No.

Q Does the bank require any information regarding assets of this customer or affiliated customer other than assets which are on deposit with the bank?

A No.

Q If a man has a lot of money, if he is permitted to open a small account --

MR. JULIEN: Excuse me Just a minute.

THE COURT: He answered the question.

MR. JULIEN: If he had answered without the intervention of one word, it becomes a different answer.

THE COURT: He answered the question, yes.

Q If a man is wealthy and has accounts in many banks, would you nevertheless permit him to open up a small checking account?

MR. JULIEN: I object to this, your Honor. What has that got to do with this case? It is so far afield from anything in this case I really think we are going into areas that make no sense here.

THE COURT: I think it is essentially immaterial and irrelevant. We are going to take a recess at this time.

I informed you on Friday that I was going to give you broad latitude. I think that I have given to, so let's get down to the essentials at this point.

All right. We will take a short recess at this time.

(Recess.)

BY MR. HART:

Q Mr. Sixt, in discussing earlier how individuals can obtain government bearer securities, you mentioned by subscribing to a bank or by purchase from a brokerage house, and you described the type of papers that such a person might receive in connection with that transaction.

There are other ways that individuals can acquire government bearer securities, are there not?

A You mean be in possession of?

Q Be properly and legally in possession of, yes.

A Yes.

Q What are some of those means?

A They could inherit them, or they could be made a gift, made as a gift.

Q In those situations are there any documents which would be in the form of a bill of sale?

MR. JULIEN: I object to it, your Honor. That is not a claim in this case and I think again we are going afield. These are not the issues here. No claim is made about any inheritance or gift.

THE COURT: I am going to overrule the objection.

A The question eludes me at the moment.

Q The question is, in a situation where a government bearer security is acquired by inheritance or by gift, would there be a document of any sort that you referred to as a bill of sale?

A There might be.

Q Like what?

A Well, in the case of being a beneficiary in a will it might indicate in there the government securities are to be given to Mr. X.

Q So then the will would be the form of bill of sale.

A Yes.

Q And if someone came in and told you he had these securities and he inherited them, would you ask for a copy of the will?

A Again, it depends on -- you mean you want a yes or no?

Q Assuming now that you have decided that you wanted to deal with the person and it was just a matter of satisfying yourself that he was properly in possession of these government bearer securities, making those two assumptions.

MR. JULIEN: I object to that, your Honor.

THE COURT: It is overruled. You may answer.

A I have to answer that would depend on the individual transaction.

Q You mean you might ask for a copy of the will?

A I might.

Q How about if the acquisition was by gift; then there wouldn't be anything at all, would there?

A There wouldn't be anything.

Q And if you wanted some of this proof you say you would ask for -- what would you ask for?

A Again, depending upon the amount involved, I might suggest he go to the party that gave it to him and complete the transaction where he bought them.

Q But if you yourself wanted to make this transaction because he was a customer or an affiliated customer, you said you would want some proof of ownership or right to possession. But in the case of a gift, would there be any at all?

A I don't think so.

Q Would that mean that you would not deal with this person or would you deal with him without the proof?

A Again, it depends upon the individual trans-

action and the amount involved.

Q If you felt that you needed proof and the man said he acquited it by a gift, then you would tell him you would be unable to engage in the transaction, is that what you are saying?

A I might. You see --

Q Would you or wouldn't you?

A You are putting me on a spot. I said each transaction was on its own. A five or a ten thousand dollar one would be a different transaction than one of 60 or 100 thousand.

Q In 1966, where were you physically engaging in the banking business?

A I was at Farmingdale building up a new branch.

Q In that period did you have much contact with government securities?

A We had quite a few subscriptions -- we didn't do much buying and selling at that time.

Q There was some testimony in this case earlier that in 1966 the theft of government securities was not as prevalent as it became a short time thereafter, two or three years thereafter. Is that true in your experience? Is that your recollection of the period?

A Yes.

Q As a banker, dealing in negotiable paper and engaged in the world of commerce, what would you expect to be the reaction of a bank or a broker when it discovered that it was missing bearer securities?

MR. JULIEN: I object to that.

THE COURT: I will permit him to answer a banker.

A Would you please repeat the question?

MR. HART: Read it back, please.

(Question read.)

A I would be chagrined, that's for sure.

Q Would you do anything?

MR. JULIEN: This I object to, your Honor.

THE COURT: Overruled.

MR. JULIEN: Outside the scope of direct.

THE COURT: Overruled.

A Why do anything? Yes, I would make a thorough search of every secuity held in the vault, every customer's account.

Q Having determined that you couldn't find --

MR. JULIEN: Excuse me. Did you finish your answer, sir?

A I said I would check every security in

the bank and recent transactions going back involving securities.

Q Would that be to see if you made a bookkeeping error of some sort?

A Bookkeeping or wrong delivery.

Q But now I ask you to assume you have done all that and you have determined, or the bank or brokerage house has determined,the security is simply missing from the premises, it cannot be located. As a banker, what would you expect to be done, if anything?

MR. JULIEN: I object.

THE COURT: Overruled.

A The length of time it takes to verify all securities physically depends on the size of the brokerage house or the bank and the time.

Q It depends on the volume of trading in the particular security, does it not?

A Either the trading or that which you have in your custody.

Q But there comes a time when the bank or the brokerage house has determined that,having made all of their checks, these securities are gone. Now, as a banker, what would you expect to be the next step to take place?

MR. JULIEN: I object to it.

THE COURT: Overruled.

A We would report it to our head office.

Q Have you ever been in the head office of First National City Bank?

A Yes. As an examiner.

Q Do you know what First National City Bank's practice was in that type of situation when the head office received a report?

MR. JULIEN: I object to this.

THE COURT: Overruled.

A They in turn would report it to the insurance company.

Q And stop right there?

A And probably whatever paying agent was on the bond.

Q These are government bearer securities, so who would that be?

A Your question was not just government securities. Your question was all securities.

Q Let's talk about government bearer securities.

A I imagine that the head office would write to the --

MR. JULIEN: I object to what he imagines,

if your Honor please.

THE COURT: I will sustain that.

Q Do you know what the head office would do?

A They would report it stolen.

Q To whom?

A The federal authority, U. S. Treasury.

Q Who would be the federal authority?

A U. S. Treasury, Office of the Treasury.

Q As a banker,not wondering what you should do in this type of a situation, but as a banker engaging in a transaction and having an opinion as to what other banks and brokerage houses would be doing, what would you expect a bank or brokerage house to do when such a loss was discovered?

MR. JULIEN: I object.

THE COURT: It's been asked and answered. Your objection is sustained.

Q If you wanted to find out as a banker whether or not the government bearer securities presented to you had been reported as missing or stolen, what would you do?

MR. JULIEN: I object to this. Not within the scope of the distribution at all.

THE COURT: I will let him answer, if he

knows.

A You can't get the information from the Federal Reserve Bank. You go to the Office of the Treasury.

Q And you would inquire there?

A That's right. I have never had occasion to do it.

Q You have never had occasion to make such inquiry?

A No.

Q Do you know what was required by the Bureau of the Public Debt for the redemption of bearer securities upon maturity?

A Do I know what's required?

Q Yes.

MR. JULIEN: To redeem?

Q To redeem upon maturity.

MR. JULIEN: How is that material?

THE COURT: It is immaterial. The objection is sustained, even though it wasn't made.

Q Do you know what's required by the Bureau of the Public Debt in connection with requests for denomination of exchanges of bearer securities?

THE COURT: How is that material?

MR. HART: Are you asking me, your Honor?

THE COURT: How is that material?

MR. HART: Because there is no requirement that there be any showing of proof of ownership, of proof of right to possession, of anything other than possession of the document or the instrument.

THE COURT: How is it material in this case, though?

MR. HART: These instruments were issued by the Department of the Treasury, and I believe that the standards applied by the Department of the treasury would have some bearing on the views of bankers and how they should deal with the government instruments.

THE COURT: That's a long jump because the Department of Treasury has no responsibility to stockholders or other depositors, and so forth and so on. It's immaterial. I won't let him answer it.

MR. HART: May I make an offer of proof of these two documents, your Honor, marked Exhibit N and Exhibit O for identification.

THE COURT: I presume they will be objected to.

MR. HART: They relate to the questions I just asked. They are applications for redemption

and denomination of exchanges of bearer securities.

MR. JULIEN: I object.

THE COURT: I will sustain the objection.

MR. HART: The record reflects I have made the offer of proof?

THE COURT: Yes.

Q I would like to read something to you and ask you whether you agree or disagree with what I read.

MR. JULIEN: That is no way to do it.

THE COURT: What are you reading from?

MR. HART: I am reading from a letter -- shall I state it on the record?

THE COURT: Yes.

MR. HART: Dated February 5, 1968, from H.M. Stevenson, chief of division of loans and currency, to Mr.Komoroff, attorney of record for the plaintiff in this action.

MR. JULIEN: Is this in evidence?

MR. HART: It is not in evidence.

THE COURT: All right. Read it.

MR. JULIEN: If your Honor please, he has shown me what he intends to read and once again it bears on the same subject your Honor has just excluded, and I don't think it has any pertinence.

THE COURT: He can read it, and you can make your objection, which I will then rule on.

Q "Bearer securities comprise more than 90 per cent of outstanding marketable Government obligations and under generally-recognized principles of law good title to unmatured bearer securities will pass by delivery

to a purchaser in good faith for value. They are issued primarily for the convenience of those persons who desire easily negotiable securities and in view of the great volume of transactions in such securities and the need for their immediate marketability the Treasury Department and the Federal Reserve Banks and branches do not and cannot assume any responsibility whatever to investigate title to them when they are presented in regular course, nor are banks and security dealers required to do so."

Now, I ask you, Mr. Sixt, do you agree with that statement?

MR. JULIEN: I object, if your Honor please.

THE COURT: The objection is sustained.

MR. HART: On the same ground as the previous questions and offer, your Honor?

THE COURT: No. I am sustaining the objection on the ground that this letter, or a copy of it, or something like it, is already in evidence.

MR. HART: No, sir. There is a letter in evidence --

THE COURT: I recollect reading something that is very similar to it, and I think it is repetitious.

MR. JULIEN: If I am not mistaken I think that is the one your Honor said he was exerting his discretion.

THE COURT: Yes.

MR. HART: There is a letter that contains similar language, but not a letter in evidence that contains the exact language at the end of this paragraph, namely the words "Nor are banks and security dealers required to do so."

I believe that that is a material difference, and I renew the offer.

MR. JULIEN: Entirely apart from that, if your Honor please, passing for the moment if it is in or not, it is for the Court and the law to decide what the duties are of the parties and not some ex parte statement by some Government official.

THE COURT: Yes. I also agree with that.

MR. HART: I do, too, but the witness is giving testimony on that very subject.

THE COURT: I sustain the objection to the letter.

MR. HART: I make the offer of Exhibit P for identification.

THE COURT: You have made the offer, and the objection is sustained.

Q I believe you have said, Mr. Sixt, that it seemed suspicious to you as you heard the facts described on the transactions between Mr. Mazzochi and Royal National Bank that Mr. Mazzochi withdrew the proceeds of the sale almost immediately, is that correct?

A I don't know if I used the word "suspicious" but it is pretty much the same, yes.

Q Once the sale had taken place and the money had been credited to Mr. Mazzochi's account, is it not true that he could have withdrawn every penny in that account immediately?

A That is true.

Q He had a perfect right to do so, had he not?

A He had a right to do it.

Q And did he not have a perfect right to do so in cash?

A Yes.

Q Or by bank check?

A Or by bank check.

Q Or, of course, by personal check payable to a payee of his choice?

A That's true.

Q I show you Exhibit D in evidence, and since the record will reflect I will just mention that that is the

bank statement for Mr. Mazzochi's personal account for the month of August 1966.

MR.JULIEN: Is there a question?

MR. HART: I am giving him a chance to read it.

A This is August 31, 1966.

Q Let me state to you, Mr. Sixt, that there has been testimony that the deposits shown to that account of Mr. Mazzochi were the proceeds of the sale of the treasury notes in issue in this action. Do you see those two large deposits?

A Yes, I see them.

Q What dates were they made on?

A August 9 and August 10.

Q Does that statement indicate to you as a banker that Mr. Mazzochi withdrew the proceeds of those sales immediately?

A A good portion of it on the 9th. He withdrew half of it on the 9th. He was credited $70,000 and withdrew $35,000 the same day.

Q On the 9th. And he left $35,000 in, correct?

A He left 35 in.

Q And then on the 10th what was his balance?

A 92,000, having withdrawn the -- it looks like 13.

Q Now, that is a very substantial sum of money,

is it not?

A That's right.

Q And doesn't that statement reflect that Mr. Mazzochi left in diminishing quantities that money in the bank for almost three weeks?

MR. JULIEN: Doesn't it speak for itself? Every transaction is right there.

THE COURT: It speaks for itself. It is in evidence.

Q Does that bank statement change your opinion as to when Mr. Mazzochi drew the money out in a big hurry?

A No.

Q In your experience with customers who came to you as a banker to sell Government bearer securities, in those situations where you did sell the securities was it normal for the customer to leave the proceeds of the sale in his checking account for longer periods than three weeks?

A It is very difficult to answer. It could be a yes or no answer. I have no way of determining that.

Q When these people came to you to sell the treasury notes, did they ever tell you why they were selling the treasury notes?

A Usually they would.

Q Was the purpose because they needed the money for some reason or other?

A Or because they wanted to get out of the market.

Q Would they then leave the money in the bank or would they use it to pay for something or reinvest it in some form?

A If the time were right, they would reinvest it. The periods would vary with the circumstances.

Q But in your experience, considering all of the years that you have had experience in dealing with people who are selling bearer securities, Exhibit D, Mr. Mazzochi's bank statement, indicates to you that he tried to get the money out of the bank very quickly, is that correct?

A Yes. There is a pattern here.

Q Please. No comments.

Q Do you think that a banker has a right reasonably to assume that thefts of securities will be promptly reported to authorities?

MR. JULIEN: I object to that. I really think these are questions of law, and I object to them, if somebody has a reasonable right to assume.

THE COURT: As a banker I think he can answer the question.

A Mr. Hart, did you say immediately?

Q Promptly.

A Well, these are pretty much the same. In due course, I will answer it that way. Depending upon the volume discussed.

Q You mean a small loss of securities wouldn't necessarily be reported but a large would, is that what you mean?

A No. I mean the volume that you have to check out. If you are missing something you check everything.

Q I mean after the loss has been established as being a loss. I understand that there can be errors in bookkeeping and that what appears to be a loss may not be a loss, but then there comes a time when whoever is in possession of the securities determines they are missing.

Now, at that point as a banker I ask you whether a banker can reasonably assume that the fact that those securities are gone would be promptly reported.

MR. JULIEN: This series of questions was answered, every one of them, just before the recess.

THE COURT: I will let him answer this one, and then I will close it off.

A Yes.

Q On the basis of the information that you understand the Royal National Bank had from Mr. Mazzochi when

he came in with these Government bearer securities, do you as a banker believe that Toyal National Bank should have called the police or the Federal Bureau of Investigation to report that they had perhaps a possible attempt to dispose of stolen securities?

MR. JULIEN: Nobody has made that charge. I object to it, your Honor.

THE COURT: Sustained.

Q Between the third transaction and the fourth transaction that Mr.Mazzochi engaged in at the Royal National Bank that was a lapse of a little over a month, and there has been testimony that during that period there was no indication of any problem, of any trouble, or of any possible defect in the title of the securities which Mr. Mazzchi had presented.

Now, I ask you as a banker considering the fourth transaction whether this lapse of time between the third transaction and the fourth transaction would be a factor that you would consider in determining whether or not to make a sale for Mr. Mazzochi?

MR. JULIEN: I have to object. May I state why I have to object?

THE COURT: Yes.

MR. JULIEN: Because it assumes that the witness

would have allowed the first, the second or the third transaction. And, therefore, it assumes approval of something which he has already said he disapproves from the very outset.

THE COURT: He is entitled to assume that in this question. I think Mr. Hart is entitled to assume that in his question, whether the lapse of time between the one transaction and another would affect his judgment as to whether he would take the fourth transaction.

A Are you asking the question if I were the Royal National Bank officer?

Q I am asking the question of you as a banker.

A It is hard for me to relate for this reason, that I wouldn't have allowed the first three to take place.

Q Let us suppose that someone else in the bank had approved the first three, and now the fourth is brought to you, and you know whatever it is that we have described about Mr. Mazzochi, and you know that there has been a lapse of a little more than a month since the prior transaction and there has been no indication of any defect of title to the securities that had been previously sold.

My question is whether the lapse of time between the third transaction and the fourth transaction would be a factor that you would consider in making your

judgment.

A No.

Q It would have nothing to do with your consideration?

A No.

Q Have you had experience or experiences in your banking career where attempts have been made to sell to or through your bank, or pledge as collateral with your bank securities which turned out to be stolen?

A Spurious.

4B

Q I am sorry?

A Spurious.

MR. HALPERN: I object to that and ask that that be stricken. That is not responsive.

Spurious documents aren't stolen documents.

THE COURT: That is true. I am sustaining the objection because it is not responsive.

MR. HART: That is an objection to the answer.

THE COURT: So the question is still standing.

Have you had experience with stolen documents?

THE WITNESS: Now you are saying documents.

Q Government securities.

A Bills of lading.

THE COURT: We are talking about securities.

THE WITNESS: No.

Q You have not had any experience with stolen securities?

A No.

Q In the courses and seminars that you have given have you ever had occasion to give a seminar dealing with the area of what banks should or should not do in dealing with attempts to pass stolen securities?

MR. JULIEN: I object.

THE COURT: Overruled.

A My course would tell them or instruct them to be sure of ownership. In other words, we used to say know your customer, know your endorser, know your customer in any transaction, and proof of ownership would vary.

Q I don't believe that was responsive to the question.

THE COURT: I think it was. He would have said and then you would have asked what do you mean about that, so he is a step ahead of you.

Q In your experience as a banker --

MR. JULIEN: Your Honor, I am going to offer, and I am only asking for the interruption because it means whether a man has to wait here or be sent away, but I am going to offer the examination before trial of Mr. Dutchen, who was a member of that credit union that we have been talking about. It is brief, and I would like to save the time of that gentleman and of all of us really, if I may offer that deposition, and if there is no objection to it, I will send him away.

MR. HART: You mean offer the deposition in lieu of live testimony?

THE COURT: Yes.

MR. HART: I have no objection to Mr. Dutchen's deposition being offered on that basis.

MR. HALPERN: I want to see if we attended that deposition.

(Discussion off the record.)

MR. HALPERN: The transcript doesn't show that we appeared, so as far as I am concerned it can't be binding upon me, as far as the transcript is concerned.

MR. JULIEN: It doesn't bear on you.

MR. HALPERN: If you want to offer it without it binding me, I have no objection to it.

MR. JULIEN: That is all right.

MR. HALPERN: All right, then there is no difficulty.

MR. HART: It is received against me, but not against him.

THE COURT: It is offered and received against you but not against Mr. Halpern.

xx (Plaintiff's Exhibit 51 for identification was received in evidence.)

MR. HART: I have no further questions of this witness, your Honor.

CROSS-EXAMINATION

BY MR. HALPERN:

Q Mr. Sixt, you have given us quite a bit of testimony with respect to the care and caution that you

would take in accepting a bearer instrument, isn't that right?

A Yes, sir.

Q Could you tell us the reason for the care and caution that you would take?

A It is a principle of prudent banking to exercise caution in all transactions because anything that we do, we are responsible for.

Q In other words, you take this care and caution to avoid responsibility on the part of the bank?

MR. JULIEN: He didn't say avoid.

A I didn't say to avoid.

THE COURT: To avoid liability.

MR. HALPERN: Liability, I'm sorry.

Q Liability on the part of the bank, isn't that right?

A That's right.

Q If there is anything wrong with any of these documents, and you have sold them through a stock broker, your choice, would they be kicked back to you?

A Yes.

Q And would the stock broker look to you for reimbursement of the money?

A Yes.